

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE  
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: ISO REVIEW OF VARIOUS INVESTIGATIONS

STATE CAPITOL  
ROOM 4203  
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 5, 2003

10:45 A.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair

SENATOR DEBRA BOWEN

SENATOR BYRON SHER

MEMBERS ABSENT

SENATOR WES CHESBRO

SENATOR MARTHA ESCUTIA

SENATOR BETTY KARNETTE

SENATOR SHEILA KUEHL

SENATOR WILLIAM MORROW

STAFF PRESENT

LARRY DRIVON, Special Counsel to Committee

BOB PRATT, Legislative Counsel

CHRIS SCHNEIDER, Investigative Consultant

SCOTT CHAVEZ, Consultant to SENATOR MORROW

WADE TEASDALE, Chief of Staff, SENATOR MORROW

ALSO PRESENT

CHARLES F. ROBINSON, Vice President and General Counsel  
California ISO

JIM DETMERS, Vice President of Grid Operations  
California ISO

TRACY BIBB, Director of Scheduling  
California ISO

ZIAD ALAYWAN, Director  
Market Operations  
California ISO

MARGARET ROSTKER, Regulatory Counsel  
California ISO

JIM McINTOSH, Director  
Grid Operations  
California ISO

ZORA LAZIC  
Personal Services Contractor  
California Department of Water Resources

SUSAN LEE  
Personal Service Contractor  
California Department of Water Resources

JERRY JORDAN, Executive Director  
California Municipal Utilities Association

C. ANTHONY BRAUN, Attorney  
Braun & Associates  
Representing CMUA

SPENCE GERBER, Program Manager  
MD02 Implementation Program Management Office  
California ISO

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01 P-R-O-C-E-E-D-I-N-G-S

02 --ooOoo--

03 CHAIRMAN DUNN: We're actually going to get going  
04 now. Bill may be a little bit delayed, but will be joining us  
05 as soon as he can.

06 We'll get started. Even though we're not here  
07 with a quorum, we will go forward as is.

08 First, I want to take a point of reference; that  
09 is, a point of personal privilege, but others may disagree with  
10 that.

11 I noted senior management's comment in the press  
12 regarding the Enron plea yesterday. And once again, I find it  
13 disturbing because it seemed to imply a lack of knowledge about  
14 had occurred. And this has been my complaint from the very  
15 beginning, which is either senior management knew and didn't do  
16 anything about it, referring to the Enron games, or didn't know  
17 and should have known. So once again, we strike with  
18 Mr. Winter's comments in the article this morning. I believe it  
19 was in the Sacramento Bee.

20 Today we're just following up on the hearing that  
21 we had to cut short last week as a result of a conflict and  
22 being called to caucus. So, we're just to wrap up on those  
23 issues. The issues are the same as indicated last week. We're  
24 going to finish up on C66 protocol discussion, the fictitious  
25 load, touch upon Perot Systems, and the MD02 update. The latter  
26 two, Perot and MD02, will be relatively quick.

27 The first thing I want to do is share with  
28 everyone, and Charlie, welcome if you have any additional

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01 comments, welcome those as well, a point of some dispute,  
02 disagreement, perhaps controversy, as a result of some comments  
03 made at the last hearing. It related when Charlie was talking  
04 about the Morgan Stanley lawsuit during the course of our  
05 discussion about C66 and CBM

06 Following that hearing, what we did is follow up  
07 to gain some knowledge on the lawsuit that Charlie had  
08 referenced by Morgan Stanley to determine what it was all about,  
09 and Morgan Stanley's view as to their complaint and the C66/CBM  
10 issue.

11 It was in the course of those discussions with  
12 Morgan Stanley that Morgan Stanley took the position that, no,  
13 this had nothing to do -- "this" referring to the lawsuit -- had  
14 nothing to do with CBM. It didn't reference CBM. In fact,  
15 wrote a letter to us, which I believe is out there and available  
16 for everyone on the tables in the back. It's a February 4th  
17 letter from Ed Moulin, who has been the long-time legal  
18 counsel for Morgan Stanley, and by long-time, I mean in all of  
19 our Committee's dealing with Morgan Stanley.

20 So, that letter is there.

21 We did receive a letter as well one day before  
22 that, February 3rd, from Charlie in which he wished to clarify  
23 some of the comments that were made because of our belief that  
24 those comments were inaccurate as to the CBM and the Morgan  
25 Stanley lawsuit.

26 Basically at issue there was, what did market  
27 participants know about the C66 issue, and whether in fact was  
28 it secret, which of course ISO disputes that characterization of

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01 the CBM/C66 issue, and the Morgan Stanley complaint was perhaps  
02 evidence that it was not secret. Charlie's letter is also made  
03 available out there as well, too, dated February 3rd. It speaks  
04 for itself on his clarifications of some of the comments that  
05 were made before the Committee.

06 Obviously Charlie, as you know, it's not going to



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07 be a surprise to you. It was of great concern to the Committee  
08 because we drew the impression from your comments last week that  
09 the Morgan Stanley lawsuit evidenced knowledge by the market  
10 participants of that protocol; when, in fact, and I think you  
11 got a copy of Ed Moulin's letter.

12 MR. ROBINSON: Yes, I have.

13 CHAIRMAN DUNN: They vehemently disagree with the  
14 that characterization of their lawsuit. And so, it was  
15 disturbing to us, to say the least, that at least we felt we  
16 were being left with the impression that it was something  
17 different than it actually was.

18 I know you wrote your letter in clarification,  
19 but any additional comments, Charlie, you wish to make on the  
20 issue?

21 MR. ROBINSON: Yes, thanks very much.

22 When I raised the Morgan Stanley complaint issue  
23 at the last session of this hearing, it was not really to rebut  
24 the notion that we had not fully disclosed the CBM issue to  
25 market participants when we -- when we began the practice in  
26 December of 2000.

27 The point that I was trying to make when I raised  
28 the Morgan Stanley complaint was that it was an issue that had  
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01 surfaced and had been fully disclosed by the ISO during the  
02 course of the Morgan Stanley proceeding back at FERC. And  
03 therefore, one should not or could not reasonably infer that we  
04 were intending to hide the issue from this Committee during the  
05 course of discovery.

06 I believe in your opening comments you've  
07 indicated that I raised the Morgan Stanley complaint in order to  
08 suggest that market participants were widely aware of the issue  
09 at or around the time that Morgan Stanley filed its complaint.

10 While I did believe at the time that I made my  
11 statements that Morgan Stanley was aware of the CBM issue, and  
12 while I now believe, based on a review of the complaint, that  
13 they were not aware of the issue, it really wasn't my intent at  
14 the time to use the Morgan Stanley proceedings as any kind of  
15 rebuttal or any kind of notion that it was widely understood.

16 I think if you look through the transcript,  
17 you'll see a point where I say, "My point is," and the point is  
18 the same one that I've made here.

19 I think a number of times during the course of  
20 the proceeding I indicated that I thought we could have done a  
21 better job of advising the marketplace about the C66 practice at  
22 the time that we implemented it. And I believe that I indicated  
23 to you that you were assuming facts not in evidence with respect  
24 to how widely known it was.

25 But frankly, I didn't know how widely known it  
26 was. It was not my intent by referencing the Morgan Stanley  
27 complaint to suggest otherwise.

28 CHAIRMAN DUNN: Let me do some follow-up  
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01 questions real quickly on this issue, and then we'll get back to  
02 the merits of C66, Charlie, if I can. Then we're going to put  
03 everybody under oath.

04 In Ed Moulin's letter of February 4th, the  
05 Morgan Stanley letter, he references, and I'll read a very brief  
06 little paragraph here. It says,

07 "During a second settlement  
08 conference on December 3, 2001,  
09 Mr. Yuffee, on behalf of Morgan  
10 Stanley, and other parties  
11 learned from the CAISO for the  
12 first time about the CAISO's CBM  
13 methodology. I have been told

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by counsel that, pursuant to the  
FERC's rules, settlement  
discussions before a settlement  
judge are privileged and  
confidential."

He cites the authority.

"Accordingly, Morgan Stanley was  
not, and still may not be at  
liberty to disclose the  
substance of the CAISO's  
statements concerning CBM to  
parties that were not present at  
the settlement conference."

As you know, Charlie, we did a follow-up letter  
asking for another waiver of attorney-client privilege, and your

response in your other February 4th letter was, we need to be  
more specific, then ISO will try to assist us in that regard.

Let me just pose a question to you. I'm not  
seeking an answer, but for clarification, we'd like feedback as  
quickly as possible.

I would like ISO's waiver of the attorney-client  
privilege as to communications that occurred during that  
settlement conference. I know that's more than just the  
attorney-client privilege, but I want to know that ISO also has  
no objection if we get the other parties to that settlement  
conference to waive any privileges for confidentiality to get  
access to information about what occurred at that settlement  
conference.

So my question to you, Charlie, and if you would  
get back to me as soon as possible, is: Will ISO not object to  
our inquiry as to information relating to that settle  
conference?

MR. ROBINSON: And that's not my decision alone,  
so I will --

CHAIRMAN DUNN: That's why I wasn't seeking an  
answer right now, because I know that, Charlie, that it is not.  
Bob, why don't we swear everybody in, then I'm  
going to have Chris share some comments at that point in time.

[Thereupon the witnesses,  
JIM DETMERS, TRACY BIBB, and  
CHRIS SCHREIBER, swore to  
tell the truth, the whole  
truth, and nothing but the

truth.]

CHAIRMAN DUNN: Let the record note that Chris  
also was part of that, Bob, so he did say "I do" as well.

I want to get back to the merits of the C66  
issue. Chris, I want to ask you to provide the Committee with  
some overview of the additional work that Committee staff has  
done on this issue, particularly since the last hearing a  
week-and-a-half ago. But for those that are just new to this  
issue, a very brief overview of what the C66 issue is.

MR. SCHREIBER: Chris Schreiber on behalf of the  
Committee, an investigator with the Committee.

C66, very briefly and in lay terms, is what the  
ISO refers to as a reserve of transmission capacity. And the  
way this works is that there are power lines, obviously, that  
run north and south, and each line has a rated capacity. In the  
case of lines that were affected by this protocol, we're talking  
about varying capacities, generally several hundred megawatts,  
in the case of one line more than 2,000.

And of the available capacity on the line, a  
large chunk of it is reserved by existing transmission

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21 contracts, generally, as I understand it, held by munis, and  
22 firm transmission rights which are sold in a process that the  
23 ISO runs, and please correct me if I'm wrong at any point, Tracy  
24 or Jim

25 So, that takes up a substantial percentage of the  
26 line.

27 The remaining percentage, or the remaining -- the  
28 net of those two things, which is usually, again, several

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01 hundred megawatts, is what the ISO puts up for auction to market  
02 participants in the day-ahead market. And on any given day,  
03 let's say, and I'll make these numbers up, you have 700  
04 megawatts available. The market will bid on that 700 megawatts  
05 in the day-ahead market as part of the schedules that they  
06 submit.

07 On December 30th of 2000, the ISO began a  
08 protocol which colloquially we refer to as C66. That's actually  
09 a contract number, but it was an obscure reference to the North  
10 American Electricity Reliability Council tariff, called the  
11 Capacity Benefit Margin, CBM. And what CBM has traditionally  
12 and historically been used for is to reserve capacity to serve  
13 load for -- and this is in the old school system of regulated  
14 utilities -- for customers of the old investor-owned utilities.

15 And I think it's fair to say that this practice  
16 was generally done for import schedules and not export  
17 schedules. In other words, it would allow PG&E to bring in  
18 extra power on transmission that they had reserved as part of  
19 the CBM if their load were to increase, if the demand of their  
20 customer base were to increase.

21 So on December 30th of 2000, the ISO instituted  
22 this policy, and to the best of our knowledge, did not inform  
23 anybody about it.

24 It continued for varying periods on three  
25 interties, three lines, the longest of which ended on December  
26 5th of 2001, almost a year, you know, just short of a year after  
27 it began.

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28 The others have a varying duration, but one for a  
01 month, and the other one was for about ten months.

02 And the way it worked was that that net remaining  
03 power, that I had described a moment ago, was simply removed  
04 from existence or from the ability of market participants to bid  
05 on it in the day-ahead market.

06 So, you have to start with the couple thousand,  
07 you subtract the existing transmission contracts, you subtract  
08 the firm transmission right holders, and then you're left with  
09 this amount, which normally goes up for bid, and after their  
10 protocol was enacted, was not available. Was simply removed  
11 from availability.

12 So, this leads to a whole host of questions as to  
13 why the ISO did it, why they didn't notify market participants,  
14 et cetera. I think we can stipulate that they didn't notify the  
15 Board. And I think in retrospect, everybody would tend to  
16 acknowledge that there were errors made in the notification of  
17 market participants.

18 The ISO has described this process of decision  
19 making as a decision whether to aggregate the data or to  
20 disaggregate the data. By that they mean, should we explain to  
21 the market why that number that used to be 600 is now zero, or  
22 should we just make it zero and not tell them that it's  
23 different than the ETCs and the FTRs?

24 That decision was made, and obviously, I think  
25 several parties have raised concerns with that, not the least of  
26 which is Morgan Stanley, who thought it was a phantom congestion  
27 issue. And that was kind of the substance of their lawsuit.

28 Well, we inquired at the end of all of this, at  
0010 the end of the last hearing. We inquired of the ISO, what  
01 happened to the power? Now, we know from our own analysis of it  
02 that the power in real time was used. The transmission capacity  
03 was ultimately used. So in other words, you take out the 700,  
04 you take out the 700, you've got 700 left. And in real time,  
05 part of that 700, or all of it, was used.  
06 Well, if it wasn't made available to market  
07 participants in the day-ahead market, our question, and I think  
08 this follows logically, was: Who had access to it?  
09 And we posed the question; you sent a letter to  
10 the ISO posing the question.  
11 CHAIRMAN DUNN: Let me interrupt, Chris. I  
12 believe that letter's also available at the back of the room.  
13 This is the letter that Chris was just referring to, asking the  
14 ISO, in essence, who had access to the reserve margin.  
15 MR. SCHREIBER: Right.  
16 The answer to that question appears to be CERS.  
17 And I think the question that we asked -- and I'm afraid I don't  
18 have the letter right in front of me -- but the question might  
19 have been: Did CERS have exclusive access to the power when it  
20 was made available in real time?  
21 That appears to be the answer. And that raises a  
22 host of other questions which we are still in the process of  
23 investigating, but I think this is probably an appropriate time  
24 to undertake the investigation and Q&A here.  
25 Number one, is that legal? Is that practice  
26 discriminatory? Were market participants who wanted to use the  
27 lines and wanted to submit schedules prevented from using the  
0011 lines, prevented from submitting schedules because there was not  
01 available transmission capacity, and did that affect their  
02 ability to submit balanced schedules?  
03 Number two, what did CERS pay for the use of the  
04 transmission capacity? And my guess, and we need to prove this,  
05 is that they didn't pay anything for it.  
06 CHAIRMAN DUNN: Can you explain that, Chris, in  
07 more detail?  
08 MR. SCHREIBER: When the available capacity goes  
09 up for auction in the day-ahead market, it's just that. It's an  
10 auction, and market participants bid on the right to use that  
11 transmission capacity. That results in a price for the use of  
12 the line.  
13 And in the event of CBM, the ISO was taking off  
14 hundreds of megawatts, literally thousands of megawatts each  
15 month, megawatt hours each month. And they were simply making  
16 that power available to CERS to ship power.  
17 And again, I appreciate any technical  
18 clarification, because this is, on some level, this is  
19 speculation.  
20 CHAIRMAN DUNN: We'll get it. We're going to  
21 pass the ball over to Jim and to Tracy in a few minutes here.  
22 Continue, Chris.  
23 MR. SCHREIBER: When that power is made available  
24 to CERS, it hasn't gone through any kind of an auction process,  
25 which means that CERS isn't technically paying for the line. I  
26 don't know what kind of legal concerns that raises. I think  
27 market participants might rightly be concerned that that was  
0012 discriminatory and/or just bad practice to make it available to  
01 CERS.  
02 This also raises kind of a host of other  
03 questions that are possibly quantitatively solved, but possibly  
04 not. That is, did this have the effect of raising energy prices  
05

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06 in the rest of the state? And I think everybody has  
07 acknowledged that it did raise prices in Northern California --  
08 excuse me, in states other than California, in the Pacific  
09 Northwest.

10 The question is, did this also raise prices in  
11 California? And I'll explain that as follows. If power cannot  
12 be bid into the market because there isn't available  
13 transmission to send your power somewhere, does that in turn put  
14 a premium on the power that is scheduled? And does that in fact  
15 result in higher prices to consumers?

16 I don't know the answer to that. It's certainly  
17 a question worth asking and having answered.

18 The second question is more fundamental. I  
19 haven't heard anything from the ISO yet, and this has been a  
20 fairly vigorous inquiry, that really explains why this practice  
21 was under taken. We've heard explanations of reliability, and  
22 we've heard explanations of, you know, combating gaming, none of  
23 which to me make perfect sense.

24 Just to take on one aspect of the issue, Path 15  
25 is the bottleneck in California, the admitted bottleneck, or the  
26 alleged bottleneck in California. And when Path 15 gets  
27 congested, power from Southern California can't make it up to  
28 Northern California. So, we're left with a situation of how do

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01 we get power into Northern California, and that's really what  
02 the ISO was charged with during the height of the energy  
03 crisis.

04 One of the most historically, or I guess one of  
05 the most traditional ways to relieve congestion on Path 15 is to  
06 send power north on the DC line, which runs outside of  
07 California. It hits Oregon, and then it drops down into  
08 Northern California. This is an alternative route to Northern  
09 California.

10 What the ISO did with this protocol was, they  
11 shut off vast amounts of capacity on that DC line. So, I've  
12 been unable to really figure out if the goal was to decongest  
13 Path 15, why would you eliminate one of the more historic uses  
14 of the DC line in relieving congestion? That's what the CBM  
15 did; it blocked off -- it blocked off power or transmission  
16 capacity.

17 The second thing is, why was so much blocked off?  
18 In November of 2001, the Committee had a hearing in which both  
19 the ISO and CERS attended. They together explained a number of  
20 issues related to the relationship between CERS and the ISO.

21 In that hearing, Pete Garri, who is the Director  
22 of the California Energy Resources Scheduling, CERS, which was  
23 the power buying arm of the Department of Water Resources, DWR,  
24 explained that they were engaged during the summer of 2001 in  
25 what were called short-term power exchanges, which are oral  
26 agreements between CERS and market participants outside of  
27 California in which power was exchanged between them without a  
28 written contract being done. And the short-term power

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01 exchanges, as I understand it, are somewhat traditional, but I  
02 don't know to what extent they were used. And our subsequent  
03 inquiries into these things was never really satisfied.

04 The short-term power exchanges, I think, may be  
05 the result or may be implicated in some of the CBM fallout.

06 CHAIRMAN DUNN: Explain how.

07 MR. SCHREIBER: Okay.

08 My understanding is that when the utilities were  
09 particularly uncredit-worthy, or credit unworthy, they were not  
10 able to make payments. And this is reason why the Legislature  
11 acted to bring CERS in as the credit-worthy counterparty to the  
12 ISO -- or to the utilities.

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13 And during vast periods of the energy crisis,  
14 extensive periods, the ISO or CERS paid back energy in kind with  
15 other energy, and short-term power exchanges became much more  
16 common. As I understand it, the ISO would -- and it may be  
17 incorrect to say the ISO here; CERS or some entity responsible  
18 for bringing the power and using it in the state, and that may  
19 be a combination of both, I'm not certain -- we would send power  
20 north in off hours, and they would send power south during peak  
21 hours. It's a traditional arrangement.

22 We were doing, though, during this period, two  
23 and three-for-one exchanges with the ISO -- with entities  
24 outside of California. And so, for every megawatt that we got  
25 introduced from the Pacific Northwest, we would send two or  
26 three megawatts north.

27 This seems to be is most logical explanation that  
28 we've come across yet to explain why the ISO undertook CBM,

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01 because if you've got 200 megawatts at a peak time in  
02 California, and you were sending back three times that amount,  
03 600 megawatts, you know, at 2:00 in the morning during our  
04 downtime, you would need that much transmission capacity  
05 available on the line to send it back up north. And these were  
06 north-bound lines that we were using.

07 This is the most plausible explanation I've heard  
08 thus far. And again, this is what we're kind of in the process  
09 of investigating, but it also raises a whole host of  
10 questions.

11 Again, if we're buying three megawatts for every  
12 one that we're getting, are we getting taken? I mean, are  
13 consumers paying 270 megawatts, because this portion of this  
14 time was under price caps, are we paying -- and there's a price  
15 cap for about \$90. If we buy one megawatt at \$90, and we've got  
16 to pay it back with three at \$90, are we effectively paying  
17 three times over the cap for the megawatts that we're using?

18 As I mentioned, you know, this is -- this remains  
19 an open question, but thus far it's the only one that I've heard  
20 that really justifies the amount of transmission capacity that  
21 was withheld.

22 You know, I would note that the COI, the  
23 California-Oregon Intertie, was the longest lasting of this  
24 protocol, and that was stopped on December 5th of 2001. The  
25 settlement talks with Morgan Stanley in which this was disclosed  
26 was on December 3rd of 2001, and I don't know if there's a link,  
27 but the dates are very suggestive about how many of these things  
28 seem to fall into very concentrated areas. Again, worth asking

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01 the question.

02 And I guess the last point I would make here is  
03 that if we were buying three megawatts for every one that we  
04 were getting in, I would want to know where were we getting the  
05 energy that we were bringing in? Were we getting it out of  
06 market? Were we getting it under bilateral contracts? Were  
07 these oral agreements with entities, utilities, in the Pacific  
08 Northwest or Canada? Was it hydro? And then, where were we  
09 getting the power during off hours to pay it back? Were these  
10 plants -- was this generation created by Duke, was it created by  
11 Dynegy, Mirant? I don't know answer to that.

12 The problem is that this is a very difficult  
13 avenue to follow because we simply -- what we also know about  
14 short-term power exchanges, and they're often called inter-SC,  
15 which stands for inter-scheduling coordinator, or inter-control  
16 area exchanges or trades.

17 By and large, I don't think these things were  
18 kept on the books. So, we're talking about kind of a running  
19 total that you just worked off, the equivalent of which, in lay

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20 terms, would be running a line of credit at a grocery store that  
21 you pay off every Saturday. And I think generally speaking,  
22 it's the practice if you get 100 megawatts, and you've got to  
23 pay back 300, you have kind of a white board, or something like  
24 that, and you say, well, we're going to send up 200, and you X  
25 out your debt and subtract it, and that leaves you with a new  
26 total.

27 That's really, from an accounting perspective,  
28 difficult to find paper when there is none, no paper trail.

0017 Again, all of this really has left us with a lot  
01 of questions. I think we've -- we've come to the conclusion  
02 here that market participants were not appropriately or  
03 adequately notified, either in the Pacific Northwest, for that  
04 matter, California.

05 I can't still wrap my head around the idea of why  
06 Enron, when they called, they got an answer to the question.  
07 But when Morgan Stanley filed a lawsuit, they still didn't get  
08 an answer to the question. Maybe you catch more flies with  
09 honey than you do with vinegar, and maybe Enron was particularly  
10 sweet on the telephone. I don't know.

11 There's just a lot of questions, none of which, I  
12 feel like, have been really appropriately answered.

13 CHAIRMAN DUNN: Let's do this. We've got a  
14 series of questions, and I keep looking at Jim and Tracy,  
15 because you guys are most likely to be on the hot seat on these  
16 issues.

17 I'll open it up if either one of you have any  
18 opening comments you want to make in response to Chris's  
19 comments, and then we'll go to Q&A on some follow-up.

20 MR. DETMERS: My name is Jim Detmers. I'm the  
21 Vice President of Grid Operations for the California Independent  
22 System Operator.

23 I did want to open the discussion regarding the  
24 C66 issue with a brief statement of what those needs were that  
25 we were identifying and having to deal with at that time.

26 C66 was imposed on December 30th of 2000. That  
27 was in the middle of the energy crisis, or a very unstable

0018 condition as far as grid operations and unstable condition  
01 regarding markets, and unstable condition overall for entities  
02 that were dealing with bankruptcies, everything else that was  
03 happening.

04 What we were focused in on during that time, as  
05 Tracy Bibb indicated at the last hearing, was that we were  
06 dealing with two main issues. One of those main issues was  
07 dealing with Path 15. And overloads that we were dealing with  
08 day in, day out, and around the clock.

09 This again was Path 15 in the south to north  
10 direction. That was one of the main reliability concerns to  
11 which we imposed some of the CBM issues, or CBM application of  
12 that, that we put in.

13 That term again may have been misused. There are  
14 two different terms that we normally use for withholding  
15 capacity or restricting capacity for reliability means and  
16 measures. The other term that could have more better -- or  
17 better described the condition on Path 15 was called a TRM, or a  
18 Transmission Reliability Margin, something that was there to  
19 help us mitigate the overloads that we were experiencing. The  
20 overloads were not just because of schedules coming across the  
21 path. These again were in real time, actual.

22 Both schedules and actual flows due to loop flow,  
23 or unscheduled flow, also coming across Path 15 was much a  
24 concern to us, or not just a concern, but an actual condition  
25 that we had to deal with.

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27                   There was one other concern that we were focused  
28 in on, and that was serving Northern California load. We again  
0019 during that time period were unable to have sufficient resources  
01 in Northern California, insufficient resources due to  
02 hydro-electric conditions, both in California and from imports  
03 coming from the Northwest which were also dealing with very  
04 limited conditions on what they could generate and provide to  
05 California. And we were at the point of almost having to shed  
06 load throughout this entire time period.

07                   When we got into January, January 17th and 18th,  
08 we did have to interrupt firm load. But during this time  
09 period, we were very much dealing with the interruptible loads  
10 and other programs that we had that was off. So, we were very  
11 much concerned about our ability on maintaining that service to  
12 customers in Northern California. And we took the action of  
13 implacing [sic] a CBM on the Pacific DC Intertie. That was  
14 primarily used to be able to both exchange power to the  
15 Northwest, and these again are in the amounts that you were  
16 describing, two-for-one exchanges, two-and-a-half for one,  
17 three-for-one. And the particular details are available.

18                   The paperwork is available on the exchanges.  
19 CERS had in the documents that we presented to you about 87  
20 percent of those arrangements, utilizing this transmission in  
21 these emergency conditions to be able to provide service to  
22 Northern California. The remainder of that was being used by  
23 the ISO for these kind of conditions.

24                   CHAIRMAN DUNN: Let me interrupt you for just a  
25 second, Jim.

26                   What Jim's referring to is, Charlie, in his other  
27 February 4th letter, addressed these comments that Jim is  
0020

01 referring to. That's back there as well, too. It's Item Number  
02 3 in Charlie's other February 4th letter.

03                   MR. DETMERS: Yeah. The amounts that I was  
04 referring to was the amounts that were being utilized on the  
05 COI, or the California-Oregon Intertie.

06                   The Pacific DC Intertie was, for the most part,  
07 fully utilized with both exchange power as well as circulating  
08 power that came back into Northern California. There were two  
09 elements of that, that I recall, were the primary elements of  
10 being able to use the transmission facility for serving Northern  
11 California.

12                   There was no other either exchanges or serving  
13 Northern California where the two primary means and methods by  
14 which we were using the transmission facilities.

15                   CHAIRMAN DUNN: Chris, question?

16                   MR. SCHREIBER: Path 15, though, the CBM was only  
17 used for a month on Path 15; right? So, if that was  
18 particularly the trouble area, why would the CBM be used for the  
19 shortest amount of time on Path 15?

20                   MR. DETMERS: Path 15 had CBMs as well as COI had  
21 CBMs during this time period. Both of those two were, in  
22 effect, being used for the same Path 15 management.

23                   MR. SCHREIBER: Right, but Path 15 was only used  
24 for about 30 days, and COI was used for 330.

25                   MR. DETMERS: Correct. Again, what we were  
26 dealing with was an insufficiency of resources in Northern  
27 California. So, the combination of those two things caused us  
28 to limit power, or make available to us the access to the

0021 transmission system to serve Northern California, both up  
01 Path 15 --

02                   CHAIRMAN DUNN: Go ahead.

03                   MR. DETMERS: Both in the north-bound direction  
04



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05 on Path 15 without having to deal with the overloads that we  
06 were seeing on a daily basis, and having to manage on a daily  
07 basis, as well as making sure that we had access to the energy  
08 in Northern California as well.

09 CHAIRMAN DUNN: Jim, let me do a follow-up  
10 question.

11 Listening to the question that Chris posed, I'm  
12 not sure that we got an answer.

13 If that was a concern, why was Path 15 CBM only  
14 for approximately 30 days?

15 MR. DETMERS: Do you want to try it?

16 MR. BIBB: Yes. Tracy Bibb, Director of  
17 Scheduling at the California ISO.

18 I'm going to go put my thinking cap on here and  
19 go back to that period that you mentioned.

20 In my last testimony, I think I also mentioned  
21 before this Committee that we didn't want to cut off the Path 15  
22 scheduling as much as possible on the day-ahead markets to the  
23 Northern California load.

24 And so, to open up Path 15, open up the gate to  
25 Path 15, let people schedule on the forward market as much as  
26 possible from the south, where the extra resources were  
27 definitely at, at that time, and schedule into the NP 15 area,  
28 we opened up the Path 15, took restrictions off, and kept them

0022  
01 on the C66 or the COI going -- California-Oregon Intertie --  
02 going north, which then allowed, as I said before in previous  
03 testimony, that there's two users of Path 15, two primary users:  
04 Those who want to take power from the southern part of the state  
05 or from the Southwest and bring it to Northern California for  
06 use within California; and those who wish to take power from the  
07 southern part of California or the Southwest, take it through  
08 California, and to the Northwest, or other entities, maybe even  
09 Canada.

10 So, we imposed CBM to keep the primary users,  
11 again, the Capacity Benefit Margin, the margin was ours on the  
12 COI, which opened up Path 15 to allow the power to flow to  
13 Northern California, and so that we were the beneficiary of that  
14 in California, not those who wanted to take the power out of  
15 California.

16 So, that's why the CBM label was used on Path 66  
17 [sic], it was a benefit to unload Path 15, which was key in this  
18 whole keeping the lights on in Northern California as much as  
19 possible, and allowing power to go from the south to Northern  
20 California to be used.

21 CHAIRMAN DUNN: I hear you, Tracy. Again, I know  
22 I'm an outsider looking into a very complicated set of facts.

23 But I'm still not hearing an answer, that if  
24 concern was to ensure the ability to deliver power to the north  
25 from the south, you wouldn't keep the CBM in place on Path 15.

26 MR. BIBB: If the CBM's in place --

27 CHAIRMAN DUNN: For longer than 30 days.

28 MR. BIBB: If the CBM is in place, then in the

0023  
01 forward markets, the capacity is gone. And those trying to  
02 schedule are going to hit congestion, and the schedules won't  
03 happen in the forward markets.

04 That's that main reason. So, by taking the CBM  
05 off Path 15, it allowed schedules to go -- to be scheduled in  
06 the forward markets to the northern part of the state.

07 MR. SCHREIBER: Then why do it for 30 days? I

08 mean, if that was the goal -- and I apologize for asking  
09 questions down here -- but if the goal was to keep Path 15  
10 uncongested by making the power avail -- or the transmission  
11 capacity available in the forward market, why do it at all? Why

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12 do it for 30 days, why do it for one day?  
13 I mean, you're saying, as I understand it --  
14 MR. DETMERS: Let me try again.  
15 Again, what we're dealing with are a whole host  
16 of operating conditions that we were seeing. And what you're  
17 hearing are bits and pieces of that, not the full picture of  
18 what we were seeing during those days.  
19 In order to recreate that, we would have to go  
20 back and go through the log entries with you and describe what  
21 was occurring during those time periods.  
22 If my memory's correct, during that time period,  
23 we were seeing an enormous amount of loop flow coming through,  
24 or unscheduled flow, coming through the system as well up Path  
25 15. And in order to deal with that, the CBM was put in place in  
26 order to help deal with that as well.  
27 So, not only were we trying to get power into  
28 Northern California, we also had to manage the reliability  
0024 problems of managing the grid as well. And so, in that grid  
02 management, it was believed at the time that the CBM would help  
03 us in managing that loop flow across the path.  
04 So, that may be only one reason, but again, what  
05 we would have to do is recreate all of that, something that I'm  
06 not skilled at doing here on the fly, two or three years later  
07 from the event, and I apologize for that.  
08 But what we would have to do is recreate the  
09 events and take us back through that again to determine all the  
10 factors that were included in those decisions.  
11 But what we were doing is managing the grid, and  
12 trying to make sure that we could serve Northern California.  
13 CHAIRMAN DUNN: Jim, let's do this. We've got  
14 five minutes before we need to break for Senator Burton's press  
15 conference.  
16 We interrupted your comments. Do you have  
17 additional comments you want to make generically in response to  
18 Chris?  
19 MR. DETMERS: I don't know that I could pick up  
20 from here at this point. I'll turn it back over to you.  
21 CHAIRMAN DUNN: Tracy?  
22 MR. BIBB: Chris brought up a lot of issues. I  
23 think if you're going to ask more questions later on for each  
24 one, we can answer them.  
25 CHAIRMAN DUNN: I am, and we've got about four  
26 minutes to do it. We might as well start getting to some Q&A.  
27 Let me start on some. I know that Mr. Drivon has some as well.  
28 I want to get into the issue of the aggregate  
0025 versus disaggregate of the information in December of 2000.  
02 I think as we just ended last time, Mr. Drivon  
03 was finishing up some questions as a follow-up to mine, which  
04 were along the following lines.  
05 Were there discussions internal to ISO about  
06 whether to aggregate versus disaggregate the information in late  
07 December of 2000?  
08 MR. DETMERS: I cannot recall that we had  
09 specific conversations regarding aggregate or disaggregate the  
10 information.  
11 What we were focused in on is just making sure  
12 that we could manage the conditions.  
13 CHAIRMAN DUNN: I'm going to get very specific  
14 with you, Jim, so see if we can restore some of that  
15 recollection.  
16 Is it your testimony that there were no such  
17 discussions?  
18 MR. DETMERS: It is my testimony that I'm not

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19 aware of those discussions.  
20 Tracy, do you recall any discussions?  
21 MR. BIBB: I think at the last testimony or the  
22 last hearing, I did say -- I think your question was, would  
23 there have been discussions. My answer was, there probably was  
24 among, you know, management at some point. But as far as what  
25 the discussions were about applying the CBM, there was  
26 absolutely discussions about the benefits and what we were  
27 trying to accomplish.  
28 The posting part of it and the granularity part  
0026 of it, we knew by adding C66 to our data base that it would  
01 automatically roll up to our oasis and take away from available  
02 transmission, and so that the market could see what was or was  
03 not available for use.  
04 But as far as, I guess, I'm going to go back to  
05 specific, do we or don't we break it out, at the time -- again,  
06 I'm going to go back two-and-a-half years ago almost -- I don't  
07 -- I can't get down to that level as to the detail.  
08 But I know at that point it would have been  
09 impossible to post anyway because our software had to be  
10 changed.  
11 CHAIRMAN DUNN: Now, let me pose the same very  
12 specific question to you, Tracy.  
13 Were there any discussions that you are aware of  
14 internal to the ISO on the specific issue of whether, when the  
15 information was posted, it should be in an aggregate versus  
16 disaggregate form?  
17 MR. BIBB: I can't recall the conversations.  
18 CHAIRMAN DUNN: If there were, how would you  
19 suggest the Committee find out about such discussions?  
20 For example, who else at that time, December of  
21 2000, would have been involved in such discussions if they  
22 occurred?  
23 MR. BIBB: It would have been at the Director  
24 level, I believe.  
25 CHAIRMAN DUNN: That being who at that time?  
26 MR. DETMERS: Jim McIntosh, who's sitting behind  
27 us here.  
0027 MR. BIBB: Jim McIntosh.  
01 I'm sure I would have probably been part of those  
02 discussions.  
03 CHAIRMAN DUNN: You said you probably would have  
04 been part of those discussions, but at least your testimony  
05 today, don't take this as a criticism, you're of no help because  
06 you're saying you can't recall.  
07 MR. BIBB: There were so many meetings back then,  
08 Senator.  
09 CHAIRMAN DUNN: I'm not disputing that, Tracy. I  
10 understand that. There was a lot going on. Folks weren't  
11 hanging around looking for something to do. I get it.  
12 There's no secret what we're after here. One  
13 could make an argument that the decision not to disaggregate was  
14 intentional and meant to obfuscate the issue so that market  
15 participants might take a little longer to figure out what had  
16 occurred.  
17 I'm not suggesting that's what happened, but one  
18 could make the argument just as a casual observer.  
19 To determine whether in fact that's true, we're  
20 trying to find out what discussions occurred on that specific  
21 issue of disaggregating the information or not.  
22 Senator Bowen, and then we're going take our  
23 interruption at the request of Senator Burton.  
24 SENATOR BOWEN: Thank you.  
25

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26 I'm feeling exceptionally dense sitting here this  
27 morning. I'm trying to put this in basic fourth-grade sort of  
28 concepts so that I can understand what we're talking about.

0028

01 I guess the first question that I have is, of  
02 what benefit to California would it have been to reserve  
03 capacity in a way that -- it's hard to even phrase the  
04 question.

05 Why would the ISO, in your view, have hidden the  
06 ball from market participants? What benefit would have accrued  
07 to the ISO that wasn't also a benefit to California electricity  
08 users?

09 I just don't understand the motivation for why  
10 anybody would have engaged in this. Maybe somebody can help me  
11 figure that out, and then I'll be able to understand.

12 CHAIRMAN DUNN: Chris, and then we'll terminate  
13 or interrupt.

14 MR. SCHREIBER: In one sentence, what I would say  
15 is that I don't think anybody at the ISO benefitted personally,  
16 nor do I think the organization made more money.

17 I think this is an example of a protocol under  
18 taken because the ISO believed that it would increase  
19 reliability. And the point of this line of questioning is to  
20 examine whether or not the decision was made appropriately.

21 I mean, as a body, as an investigative body, I  
22 think the market participants have a legitimate complaint if the  
23 Independent System Operator is not being run as such,  
24 independently.

25 So, I don't think the ISO benefitted personally.  
26 I think they believed that it was to be a benefit to  
27 California.

28  
0029

The question I have is an open and enduring

01 question of the ISO, which is, were they counteracting gaming  
02 strategies with their own gaming strategies? And were these  
03 actions hidden in order to overcome market participants that,  
04 from my view, out matched the ISO operationally through, in many  
05 cases, no fault of the ISO?

06 CHAIRMAN DUNN: Let me just add one thing, and  
07 then we'll take our break.

08 That is the outstanding question, Chris, that you  
09 raised before about who had primary use of that reserved margin,  
10 which raises a question as well, too, Senator Bowen.

11 My apologies to everyone. At the request of the  
12 Pro Tem, we have been asked to interrupt while he has his press  
13 conference re: the budget. So, we will do that. I do not know  
14 what the projected length is of the press conference, but you  
15 all know Senator Burton. He is not much or hanging around and  
16 chit-chatting. I'm sure he'll get right to the point.

17 So, all I can suggest is, monitor the press  
18 conference in 1190, and we will reconvene five minutes after  
19 that press conference ends.

20 Thanks, everybody. We'll see you hopefully in  
21 just a little bit.

22 [Thereupon a brief recess  
23 was taken.]

24 CHAIRMAN DUNN: Welcome back, everybody.  
25 Hopefully you were downstairs listening to the press conference.

26 Let's get right back to where we were. Just at  
27 the time we had broke, we were beginning to pose questions,  
28 primarily to Jim and to Tracy, again about C66.

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01 Let me follow up on a few of the questions.  
02 Before Senator Bowen finished with her question, I was querying  
03 the issue of, since Jim -- and correct me if I'm wrong -- Jim

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04 and Tracy both are saying they can't recall whether if there  
05 were any discussions within ISO on the specific issue of whether  
06 or not to disaggregate the information that was posted in  
07 December of 2000.  
08 MR. DETMERS: That is correct.  
09 CHAIRMAN DUNN: I'm trying to figure out, since  
10 that testimony, at least the way I interpret it, doesn't say  
11 they didn't occur, you just don't recall.  
12 So, I'm trying to figure out how we might be able  
13 to explore that, and who we would talk to within ISO concerning  
14 that issue.  
15 One of the questions was, if such discussions  
16 occurred, who would have, in the regular course of business,  
17 likely to have been involved in such discussions?  
18 I think, Jim, you indicated probably you would  
19 have been.  
20 Tracy, you would have been. I think you  
21 referenced -- who was the other individual that's here as well?  
22 MR. DETMERS: Jim McIntosh, the Director of Real  
23 Time.  
24 CHAIRMAN DUNN: And who else, at least in normal  
25 course of business, would have likely been involved in those  
26 discussions?  
27 MR. DETMERS: The only other person potentially  
28 that could have been involved, most likely not, not at the time  
0031 when we initially imposed these, would have been Ziad Alaywan,  
02 Director of Market Operations, at sometime later than the  
03 initial onset of doing this. He would not have been involved in  
04 that.  
05 CHAIRMAN DUNN: So, the universe of folks in  
06 normal course of business that would have been involved are you  
07 Jim, you Tracy, and Jim McIntosh?  
08 MR. DETMERS: Yes, on the initial determination  
09 to impose the CBMs, yes.  
10 CHAIRMAN DUNN: That's not the question, though,  
11 Jim. The question isn't about the decision to impose the CBM  
12 Issue is, who would have been involved in a  
13 discussion, if it occurred, about whether to aggregate or  
14 disaggregate the information that was ultimately posted?  
15 MR. DETMERS: And that's what I'm referring to.  
16 When we initially did this, that would have been the three of us  
17 as individuals, myself, Tracy Bibb, Jim McIntosh.  
18 At a later point in time there were discussions  
19 about how to treat CBMs, and whether we need changes in our  
20 market systems to be able to post the CBMs, and at a later date,  
21 maybe months later, Ziad Alaywan would have been involved to  
22 find out how we would explore posting that information.  
23 CHAIRMAN DUNN: Okay. Jim, who was your immediate  
24 supervisor/boss at that time, December of 2000?  
25 MR. DETMERS: December, 2000, that would have  
26 been Kellan Fluckiger.  
27 CHAIRMAN DUNN: And Tracy, yours?  
28 MR. BIBB: I believe that would have been Jim  
0032 Detmers.  
01 CHAIRMAN DUNN: All right. So, we're going  
02 Tracy, Jim, Kellan at that point in time.  
03 Would Mr. Fluckiger have been involved in those  
04 discussions?  
05 MR. DETMERS: I do not recall, and I don't  
06 believe he was involved in the discussions within the control  
07 room that was dealing with this issue.  
08 CHAIRMAN DUNN: When the decision was made to  
09 aggregate versus disaggregate, did the three that you  
10

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11 identified -- Jim, Tracy, and Jim -- have the authority to make  
12 that decision without approval from higher ups?  
13 MR. DETMERS: Again, we did not make a decision  
14 regarding aggregation. So, to my knowledge, we didn't actually  
15 make a decision to aggregate or disaggregate.  
16 It was a decision to impose the CBMs to make sure  
17 that we could not black out Northern California. But --  
18 CHAIRMAN DUNN: Well, Jim, I'm not trying to pin  
19 you down here. But I'm not so sure we're staying on the same  
20 point.  
21 Because the information was posted in December of  
22 2000 in the aggregate -- so far correct, right?  
23 MR. DETMERS: It was posted as an ETC.  
24 CHAIRMAN DUNN: Right, and I think, Charlie, I'm  
25 using your words from a week-and-a-half ago of, that's what we  
26 refer to as in the aggregate.  
27 MR. DETMERS: Fine.  
28 CHAIRMAN DUNN: And that in retrospect, again  
0033  
01 stealing Charlie's or paraphrasing Charlie's comments from a  
02 week-and-a-half ago, we could have posted it in a disaggregated  
03 method.  
04 Correct so far?  
05 MR. DETMERS: Not necessarily correct. We could  
06 have put out more information than what we did at the time.  
07 Could we have posted it along with our ETCs, and  
08 ATCs, and all the other capacities inside of our market systems?  
09 No. Changes would have had to have been made in our market  
10 systems in order to do it in that fashion.  
11 CHAIRMAN DUNN: Charlie, you're going to have to  
12 help me out here. I'm tapping on memories from a  
13 week-and-a-half ago in which you had commented, paraphrase now,  
14 that in retrospect, perhaps it would have been a wiser course to  
15 post them in a disaggregated method.  
16 I'm not sure if Jim and I are talking about the  
17 same things or not.  
18 MR. ROBINSON: I think you are.  
19 It may very well be that I made assumptions about  
20 how easily we could have posted in a disaggregated form that  
21 perhaps are not justified.  
22 And I believe what Jim and Tracy are saying is  
23 that it would have been required some modification of software  
24 in order to separate it out or disaggregate the number, and I  
25 don't know what length of time it would have been taken to do  
26 that.  
27 But there would have been, obviously, other  
28 methods, through market notices or some other means, that  
0034  
01 wouldn't have been as automated.  
02 MR. BIBB: Senator, maybe I can -- let's look at  
03 this whole thing as a year long. And that's how you're looking  
04 at it. And that's how Chris has been looking at it.  
05 When you look back, the CBMs were -- on the two  
06 branch groups were there for -- or the two interties -- were  
07 there for, like you say, a year almost, so in the neighborhood  
08 of 12 months.  
09 Looking back, when this all started, I don't  
10 believe the intention was ever to leave these on for a year. It  
11 was everything that was going on that we had to deal with in  
12 this energy crisis, the CBM was imposed, put on these -- these  
13 three different lines or paths.  
14 I don't think anybody at that time thought it was  
15 going to be year before they came off. I think we were looking  
16 more like maybe days or weeks until, hopefully, something would  
17 subside in the energy crisis.

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18 As it went on, as it became drawn into weeks, and  
19 over a month or month-and-a-half, somewhere in there, there was  
20 a team put together to make sure that we were only using or  
21 applying the CBMs to the amount we actually needed on C66.  
22 There was a team put together, and around the end of April or  
23 first of May, somewhere in that area there -- I don't have the  
24 exact dates -- we started running calculations on what we would  
25 sets aside for the next day.  
26 CHAIRMAN DUNN: I'm sorry, Tracy. I don't mean  
27 to interrupt, but I think it's important.  
28 Who was on the team that you referenced?  
0035  
01 MR. BIBB: There were -- I don't have the  
02 individuals, market operations-type personnel and some  
03 engineering people.  
04 CHAIRMAN DUNN: Give me the names of those at  
05 least you do recall that were on that team.  
06 MR. BIBB: Mark, Mark Willis would have been a  
07 senior operating engineer that was involved. He's the only  
08 name that comes to mind because he's the one that I remember  
09 dealing with at the time and having conversations.  
10 But there was a team that was put together. And  
11 they were tasked with coming up with a method so we only set  
12 aside on COI, C66, that which we really felt was needed in those  
13 day-ahead or forward markets.  
14 And one of things it looked at was actual  
15 unscheduled flows that occur, mitigation of Path 15, and there's  
16 some other elements that go into that, and I just can't recall.  
17 But that was around the 8th, so the team was put  
18 together prior to April. I'm going to say around March, maybe,  
19 because we saw this thing going further out. We all hoped this  
20 would be a short-lived thing; it didn't happen.  
21 We put a team together to look at releasing as  
22 much transmission as we could. That happened -- the tool was  
23 implemented sometime in late April, early May timeframe.  
24 And if you look at the CBMs, you'll start seeing  
25 that they do start tracking -- every hour is different. And  
26 that's what this tool did. It actually released as much into  
27 the forward markets at possible, so that we didn't disrupt any  
28 market, if there was any market disruption. So, we didn't do  
0036  
01 that. Let people who wanted to even go through California at  
02 that time, instead of serving, you know, California customers,  
03 they could then get into the market, get the transmission, and  
04 do whatever they wanted to do.  
05 So, when you look back and say, why did you do it  
06 for a year? That was never the intention when you go back to  
07 December 30th of 2000. I mean, I think we all hoped that this  
08 nightmare would go away very quickly, and it didn't happen.  
09 And so, a team was put together. We released as  
10 much transmission as possible. And I think -- and I'm going to  
11 use the same reasoning for not disaggregating or more  
12 granularity in the information.  
13 I want to believe that's the same thing that  
14 happened with that particular posting, is that we didn't think  
15 we were going to be in that position for any length of time,  
16 that we'd be back out of it and not have to worry about CBMs.  
17 It didn't happen. It took a year.  
18 And I think what -- that's kind of the whole  
19 picture of how it unfolded.  
20 CHAIRMAN DUNN: I appreciate that explanation. I  
21 want to explore one other area quickly, and I know Mr. Drivon  
22 has questions as well.  
23 Again, the outsider looking in, trying to  
24 understand.

ENERGY.TXT

25 The reserve capacity ends up, Jim, I think you  
26 provided the rough estimate figures of approximately 85 or so  
27 percent used by CERS, the remainder by ISO.

28 I would look at that as a first blush, as an  
0037

01 outsider and say, discriminatory use, which I don't think  
02 anybody disputes. Violates all kinds of different rules,  
03 regulations, protocols, et cetera.

04 Please explain from ISO's perspective how does  
05 CERS end up to be a consistent 85 percent user of the reserve  
06 capacity?

07 MR. DETMERS: I believe the figure's about 87  
08 percent that's on our calculations.

09 But what we were doing at that time was focused  
10 in on the emergency conditions, again, trying to serve Northern  
11 California load.

12 CERS was the primary backer of all the  
13 transactions that the ISO was undertaking, as well as performing  
14 other functions to serve the investor-owned utility load, or  
15 PG's&E load in Northern California.

16 There were arrangements that were being made to  
17 utilize the transmission grid under our direct control, the  
18 direct control not only of the transmission capacity on the  
19 system, but also direct control of generation in Northern  
20 California to be able to minimize blackout conditions that we  
21 were dealing with.

22 The 87 percent, we would have to go back into the  
23 individual schedulers and do a lot more investigative activity  
24 to find out why was it being allocated that way or otherwise.  
25 But CERS was the only load-serving entity at that time that was  
26 making the arrangements to be able to get power into Northern  
27 California. So, their circulation of power into Northern  
28 California, as well as exchange power into Northern California,

0038  
01 all of that was being done to be able to meet Northern  
02 California's needs under our control.

03 So, when you say that there was discrimination,  
04 under the emergency conditions that we were dealing with, what  
05 we were doing is making sure that we could maintain service to  
06 California.

07 CHAIRMAN DUNN: Chris.

08 MR. SCHREIBER: How do you know that CERS was the  
09 only LSE, load-serving entity, that was planning to serve  
10 Northern California if other market participants were never  
11 given an opportunity to submit a schedule to serve load in  
12 Northern California? I mean, the transmission capacity wasn't  
13 available, so schedules presumably were never submitted because  
14 they knew it would be congestion.

15 I mean, I hate to -- that's a question, I think,  
16 a market participant would pose, and I think it's a fair one.

17 MR. DETMERS: There were no market participants  
18 at that time that identified the problem of being able to serve  
19 their load across the interfaces where we had imposed the CBMs.  
20 ETCs and the Existing Transmission Contract right holders had  
21 the ability of scheduling across those interfaces. They did so  
22 to serve their load as well as to export power as well.

23 So, the munis in Northern California were, in  
24 fact, having access to their -- their capacity to be able to  
25 serve their load. So, that portion of market participants was  
26 unaffected by that, other than they were affected by the use of  
27 the new firm use capacity to be able to export power out of  
28 Northern California.

0039  
01 CHAIRMAN DUNN: Jim, let me ask the following  
02 question, then I'll at least temporarily turn it over to Larry.



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03 Are you aware of any discussions that occurred  
04 between representatives of ISO and CERS in which the issue of  
05 CERS' virtual exclusive access to that reserve capacity, other  
06 than ISO's, was discussed?  
07 MR. DETMERS: At this point in time I don't have  
08 any recollection of specific conversations that we had, but we  
09 could go back through the records and that could be identified,  
10 if there are records.  
11 CHAIRMAN DUNN: And if we assume such discussions  
12 occurred, would there likely be records pertaining to such  
13 discussions?  
14 MR. DETMERS: Regarding schedules and the  
15 arrangements for exchange power coming into --  
16 CHAIRMAN DUNN: Let me pose it in a layman's  
17 example, if I can, Jim.  
18 CERS and ISO have a discussion in which CERS  
19 says, "We want that reserve capacity for our use and our use  
20 only, other than what ISO itself may need."  
21 Those sort of discussions, if they occurred,  
22 would they likely have been memorialized in any way that we can  
23 now review records of such conversations?  
24 MR. DETMERS: I'm not aware of memorialized, or  
25 e-mail, or documents that have that identified.  
26 CHAIRMAN DUNN: I believe your testimony was  
27 earlier, you don't recall any such conversations.  
28 Have you heard anyone suggest, second-hand,  
0040  
01 third-hand, that such discussions may have occurred?  
02 MR. DETMERS: No, I have not.  
03 CHAIRMAN DUNN: Tracy, same questions.  
04 MR. BIBB: Not directly with me, no.  
05 If it's the same question, second-hand,  
06 third-hand?  
07 CHAIRMAN DUNN: Yes, sir.  
08 MR. BIBB: When we set aside the CBMs, that was  
09 strictly for reliability issue at the time. And as I said  
10 before, in April or sometime in the May timeframe, we really  
11 reduced that down only to what we needed. And part of that  
12 calculation didn't take into what would be needed to ship power  
13 north for any kind of a pay-back.  
14 Just let me quantify that first of all.  
15 I think there was probably -- I know there was  
16 conversations with CERS that if -- power flows permitting on  
17 Path 15, that there was -- if exchange energy could be sent back  
18 to the Northwest, because if it weren't sent, that the reverse  
19 power to us would be cut off, I won't say exactly how the nature  
20 of those conversations went, but along those lines.  
21 But I do know that if Path 15 were overloaded, it  
22 would not have been allowed.  
23 CHAIRMAN DUNN: It may be difficult for you,  
24 Tracy, I don't know, but those conversations you're referring  
25 to, who was involved in those conversations?  
26 MR. BIBB: The ones that I'm aware of probably --  
27 it would have taken place in the pre-scheduling department.  
28 CHAIRMAN DUNN: Who?  
0041  
01 MR. BIBB: One, Mike McQuay would be one. That's  
02 all I can think of right now.  
03 CHAIRMAN DUNN: That's from ISO's perspective.  
04 Who from CERS?  
05 MR. BIBB: I believe Pete Garriss might have been  
06 involved in those phone calls. Maybe Chris Smith. The only two  
07 I can think of.  
08 CHAIRMAN DUNN: You said phone calls. Would  
09 those have been recorded or not recorded?

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10 MR. BIBB: No, those were -- those were not  
11 recorded.  
12 CHAIRMAN DUNN: Unrecorded line.  
13 MR. BIBB: We're always unrecorded.  
14 CHAIRMAN DUNN: But we know some conversations  
15 are, and you guys know better which ones are required to be and  
16 not.  
17 MR. BIBB: And again, these -- this is over in  
18 the pre-scheduling. This is not in real time operations. This  
19 is just like over in an office space area.  
20 CHAIRMAN DUNN: Would there be any documentation  
21 following up those conversations, e-mails, memos?  
22 MR. BIBB: I'm not -- I'm not aware of -- there  
23 could have been. I'm not aware of any.  
24 CHAIRMAN DUNN: All right.  
25 Mr. Drivon.  
26 MR. ROBINSON: Mr. Chairman, may I make one  
27 observation for the records about a comment you made earlier  
28 about the discriminatory use, and how it violates all statutes.  
0042  
01 I did want to observe that in many ways  
02 throughout the crisis, CERS was not similarly situated with  
03 other market participants because of their role as a credit-  
04 worthy backer.  
05 I don't know to what extent that observation  
06 bears on some of your questions, but I do think that it is worth  
07 noting that they were not similarly situated.  
08 As Mr. Detmers has indicated, very few people,  
09 for example, were interested in making some of the purchases  
10 that we required for real time operation. And it may very well  
11 be that some of the terms of those procurements by CERS required  
12 pay-backs that other market participants, for example, were not  
13 responsible for.  
14 I don't know factually whether that's the case.  
15 I did want to make the observation.  
16 CHAIRMAN DUNN: Let me respond, Charlie, and I  
17 appreciate any follow-up comments you may have.  
18 And that is, I wonder whether the market  
19 participants agree that they are not similarly situated and FERC  
20 itself.  
21 I don't know myself whether it's common knowledge  
22 among the other market participants that CERS had, I know,  
23 initial review, Jim, 87 percent of that reserve capacity.  
24 Now, hearing that, perhaps here for the first  
25 time, it would be interesting to see what others, their view on  
26 that question is, obviously, but they've got lots of  
27 sophisticated folks representing their interests. If they  
28 believe there was something untold, I suspect they will take  
0043  
01 whatever steps they believe are necessary to do so.  
02 Mr. Drivon.  
03 MR. DRIVON: If I understand it right, this C66  
04 was a way of taking away transmission capacity. Is that  
05 basically right?  
06 MR. DETMERS: Reserving transmission capacity  
07 to --  
08 MR. DRIVON: Making it look like it wasn't there.  
09 MR. DETMERS: It was making it unavailable to the  
10 normal processes if things were normal.  
11 MR. DRIVON: And so, you would use a C66 to  
12 reserve capacity on a particular line, and then that would be in  
13 the forward market; right? The day-ahead market, or something  
14 like that?  
15 MR. DETMERS: Yes.  
16 MR. DRIVON: And then, you knew that you would

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17 probably allow that transmission to be used in real time the  
18 next day; right?  
19 MR. DETMERS: Yes. Again, what we were trying to  
20 mitigate were reliability problems in that real time.  
21 MR. DRIVON: I understand.  
22 MR. DETMERS: I didn't say that it was always  
23 used.  
24 MR. DRIVON: No, I didn't say that it was always  
25 used, but that it was going to be available for use in real  
26 time; right? I mean, it might not actually get used because it  
27 might not actually be needed, but it would be available.  
28 So, would it be then that there would be an  
0044  
01 advantage to a market participant who knew that that arrangement  
02 was in place, versus somebody who didn't know why the  
03 transmission capacity was unavailable?  
04 MR. DETMERS: Could it have been used to an  
05 advantage by a market participant?  
06 MR. DRIVON: Uh-huh.  
07 MR. DETMERS: I again am not the expert on the  
08 market side of -- of that operation. Someone would have to  
09 answer that better than I to know if it was -- it could be taken  
10 advantage of.  
11 MR. DRIVON: Okay.  
12 Why was it that Morgan Stanley was not informed,  
13 at least at the time that they filed their lawsuit on June 14th  
14 of 2001, of why this transmission capacity was unavailable?  
15 MR. ROBINSON: I don't know.  
16 MR. DRIVON: I think a week-and-a-half ago you  
17 said that the reason that Enron was informed was because they  
18 asked.  
19 MR. ROBINSON: That's correct.  
20 MR. DRIVON: In looking at Morgan Stanley's  
21 letter of February 4th of this year, they indicate that part of  
22 the reason that they filed this FERC action was because they  
23 thought that it was phantom congestion, and that that phrase had  
24 been used in connection with the unavailability of that  
25 transmission capacity by the FERC itself.  
26 Did you read that in that letter?  
27 MR. ROBINSON: Could you refer me to where you're  
28 pointing?  
0045  
01 MR. DRIVON: Sure. It starts out at the end of  
02 the fourth line up from the bottom, where it says,  
03 "FERC previously described the  
04 apparent unavailability of  
05 transmission created by these  
06 inconsistent scheduling regimes  
07 as [quote] 'phantom congestion.'"  
08 MR. ROBINSON: Yes, I see that.  
09 MR. DRIVON: Do you have any information that the  
10 FERC was told what the ISO was doing with C66 at the time that  
11 it was being done, like say January of 2001?  
12 MR. ROBINSON: I do not personally have any  
13 information to that effect.  
14 MR. DRIVON: Well --  
15 MR. ROBINSON: I don't know of anyone else. I  
16 don't know.  
17 MR. DRIVON: Do you think that that would be the  
18 kind of information that would be helpful to the FERC in trying  
19 to assess the problem, the general availability problem in  
20 California at that time?  
21 SENATOR BOWEN: I don't remember FERC being  
22 particularly interested in assessing any problems in California  
23 at that point.

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24 MR. DRIVON: I don't disagree with that.  
25 CHAIRMAN DUNN: They're still trying to figure  
26 out if there was a problem.  
27 MR. DRIVON: My question is prompted by the fact  
28 that apparently a major market participant, or at least market  
0046 participant Morgan Stanley, was listening to what the FERC was  
01 saying. The FERC is calling this phantom congestion, and you  
02 folks are saying that, you know, this is just use, appropriate  
03 use, of an available tool.  
04 And it seems to me like there's at the very least  
05 a major miscommunication going on here between the various  
06 people that were involved.  
07 Is that an unfair observation?  
08 MR. ROBINSON: I'm not sure I understand your  
09 question.  
10 MR. DRIVON: Well, do you believe that there was  
11 a misunderstanding as to what was going on with respect to that  
12 transmission unavailability among the market participants and  
13 FERC and the ISO at the time that it was taking place in January  
14 of 2001, for instance?  
15 MR. ROBINSON: The only information that I have  
16 at this point is that it appears that Morgan Stanley was not  
17 aware of the CBM limitation at the time they filed their  
18 complaint.  
19 MR. DRIVON: Do you have information that anyone  
20 other than Enron was?  
21 MR. ROBINSON: I have no information that anyone  
22 else was.  
23 MR. DRIVON: Did the use of these C66 protocols  
24 cause any separation, price separation, in the markets north and  
25 south in electricity in California during the first six months  
26 of 2001?  
27 MR. ROBINSON: I don't know the answer to that  
0047 question.  
01 I think I should say that a number of the  
02 questions that you're asking now are probably more appropriately  
03 directed to others at the ISO.  
04 You're essentially asking about market  
05 performance, and pricing, and issues of that sort. The fact  
06 that I don't it doesn't necessarily mean that there aren't  
07 others who know.  
08 MR. DRIVON: Well, how about you, Mr. Detmers?  
09 MR. DETMERS: I wanted to mention, any time we  
10 have Path 15 congestion, it's being mitigated either in the  
11 forward markets or in real time, and the system is split.  
12 We do have a difference in price between Northern  
13 California and Southern California. And so, that is something  
14 that happens on a regular basis because of the congestion on  
15 Path 15. And that's not something that's unique.  
16 And I don't know that -- and I don't know if the  
17 analysis has been done to find out if the CBMs had any impact on  
18 that or not. But that's an effect of the congestion on Path 15.  
19 MR. DRIVON: Do you know whether DMA has done any  
20 analysis of the effect of the use of C66 during that period of  
21 time?  
22 MR. DETMERS: I'm unaware of any analysis because  
23 of C66 done by DMA.  
24 MR. DRIVON: Do you know whether anyone has  
25 discussed having DMA do that?  
26 MR. DETMERS: I'm unaware of that.  
27 MR. DRIVON: What, if anything, has been done to  
0048  
01 try to determine whether or not the use of C66 had a beneficial

02 effect on the market, so that perhaps it could be considered in  
03 the future?

04 MR. DETMERS: I'm unaware of that as well.

05 MR. DRIVON: Do you think it was an effective  
06 tool?

07 MR. DETMERS: To mitigate our reliability  
08 concerns, yes, it was an effective tool given the controlled  
09 situation that we were dealing with, and that we had to have in  
10 place in order to control the system, that the effects of what  
11 we imposed on the system did allow us the full use of the  
12 transmission grid to help serve Northern California.

13 We actually mitigated quite a few of the outages  
14 that we were dealing with, or the shortages, in Northern  
15 California. That was helping that condition.

16 I know that there was an impact outside of  
17 California on the lack of available use of this transmission  
18 grid. However, I'm unaware of any outages throughout the rest  
19 of the western United States as a result of this. We were  
20 still, even with these in place, dealing with shortages in  
21 Northern California and the full use of the Pacific DC Intertie  
22 to be able to get power into Northern California.

23 MR. DRIVON: So to your knowledge, there's been  
24 no analysis of the experience with C66 that has been done  
25 retrospectively to determine whether it, versus some other tool,  
26 would be an effective thing to use in the future?

27 MR. DETMERS: I haven't -- we have not performed  
28 that analysis. And at this point, I don't know that we're  
0049

01 pursuing that because we pursued other things here in California  
02 to bring on new generation, as well as other things that are  
03 still happening here in California to provide the resources  
04 necessary.

05 MR. DRIVON: Was there a functioning electricity  
06 market in January of 2001?

07 MR. DETMERS: Well, that's a question better left  
08 to the market experts and those that are the economists to -- to  
09 decide that.

10 MR. DRIVON: How about from your viewpoint?  
11 You're the one who was sweating bullets over megawatts on the  
12 control room floor.

13 MR. DETMERS: I believe we have testified in  
14 front of you before regarding all of the conditions, and those  
15 are a matter of record.

16 We did have severe difficulties on -- on  
17 utilizing our normal market mechanisms to be able to serve  
18 Northern California as well as all of California during that  
19 time period.

20 MR. DRIVON: Did the use of C66 in your opinion  
21 have the effect of raising prices on electricity across the  
22 State of California?

23 MR. DETMERS: I again would not be the expert on  
24 defining whether that had a price impact throughout California.

25 MR. DRIVON: With respect to the 87 percent use  
26 of the transmission capacity by CERS, was CERS using 87 percent  
27 of the transmission capacity freed up in real time in January or  
28 February of 2001? Or, did it ramp, their usage ramp up over  
0050

01 time?

02 MR. BIBB: Let me address that question.

03 When we received the -- a week ago Monday we  
04 received the questions from Senator Dunn. There were three --  
05 three questions on there. We pulled a lot of data to answer  
06 those questions.

07 When we say that 87 percent was scheduled by CERS  
08 over that capacity, we haven't gotten down to that granularity,

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09 because we know in real time, unused existing ETCs are released.  
10 And keep in mind that 75 percent of the California-Oregon  
11 Intertie going north is encumbered with ETCs. So, anybody who  
12 doesn't use those ETCs is released in the full -- in the real  
13 time market.

14 So, to go back and say exactly how much of the  
15 transmission was used by the ISO or CERS in real time, we would  
16 have to go back, and I think our -- our message back to the  
17 Senator was, it would take a lot -- hour by hour for 8,700-some  
18 odd hours for the month -- for the year to go over and see  
19 exactly how many ETCs went unused, and then how much  
20 transmission was -- or energy was scheduled north, to come down  
21 to that question as to how much of the CBM transmission was  
22 actually used.

23 Because it could be that, yes, there was energy  
24 going north by the ISO or CERS, but it may have all been on  
25 unused ETCs and not on the CBM that was imposed -- again, Path  
26 15 was the reason for -- the main reason for the CBM

27 CHAIRMAN DUNN: Chris.

28 MR. SCHREIBER: Just to make a very quick point,  
0051

01 that the flows do not match the rated capacity of the line  
02 during these periods. So, we know that the line was not fully  
03 congested on several days.

04 I think Tracy's point is that we don't know if it  
05 was unused ETCs or unused CBM capacity, but at the end of the  
06 day, the capacity was not all used.

07 MR. DRIVON: Who had access to the reserve  
08 capacity in the real time market that was freed up in the CBM  
09 situation?

10 MR. DETMERS: This again was the ISO.

11 MR. DRIVON: You used the C66, and then the next  
12 day it became available transmission capacity, became available  
13 in the real time market?

14 MR. DETMERS: Yes.

15 MR. DRIVON: And who would have access to that  
16 newly available capacity?

17 MR. DETMERS: The ISO.

18 MR. DRIVON: Okay, and then what did the ISO do  
19 with it?

20 MR. DETMERS: This again was providing energy  
21 both from Southern California and what was available, or what we  
22 were returning back on exchange from the Northwest to serve  
23 Northern California.

24 MR. DRIVON: Through CERS?

25 MR. DETMERS: Through CERS in their -- the  
26 capacity of being the credit-worthy backer for supplying the  
27 power to the load in Northern California and all of California.

28 MR. DRIVON: And was there any kind of an offer  
0052

01 made to any other market participants other than CERS for that  
02 capacity?

03 MR. DETMERS: No. In the real time, that was  
04 only left to the ISO.

05 There are no other mechanisms whereby the ISO can  
06 make that available to anyone, other than those entities that  
07 already have existing transmission contracts. Some of them have  
08 rights that we have to honor through those existing transmission  
09 contracts in the real time as well.

10 MR. DRIVON: Did CERS pay anything for that  
11 capacity?

12 MR. DETMERS: Not to my knowledge.

13 If I might, I was provided a document. This  
14 again was coming from our Department of Market Analysis at the  
15 ISO from the time point in December. We can hand this out.

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16 From the time point December of 2000 into  
17 January, February, the prices overall look like they're coming  
18 down. Again, they're very high, but they're, again, going down  
19 during that time period.

20 So again, it would be better explained by a  
21 Department of Market Analysis expert, better than I.

22 MR. DRIVON: Are there any DMA or other marketing  
23 people here.

24 MR. DETMERS: I don't think so. They were here  
25 at the last hearing.

26 CHAIRMAN DUNN: A couple quick follow-up.

27 Tracy, I'll pose them to you, but perhaps Jim  
28 wants to jump in here as well, too.

0053

01 I believe we defined the most likely universe of  
02 folks involved in the original decision to be Jim, Tracy, and  
03 Jim primarily.

04 And you mentioned, Tracy, I think it was your  
05 testimony, that the original intent of the CBM was only to keep  
06 around for days or, at max, weeks. It wasn't intended in  
07 December of 2000, no one anticipated it being there a year from  
08 that point in time, I think was basically the sum and substance  
09 of what you were saying.

10 MR. BIBB: That's correct.

11 CHAIRMAN DUNN: I assume that somewhere along the  
12 line then there was a decision, or multiple decisions, to  
13 maintain the CBM procedure, obviously, because it kept going.

14 MR. BIBB: Yes, and that would go back to when  
15 there was a team -- I'm not sure how the decision came about, or  
16 what all was said. But it was becoming clear that this wasn't  
17 going away, or the need for this was not going away.

18 And that's when the team was put together to come  
19 up with a way to release as much transmission as possible, but  
20 yet reserve enough back to -- for reliability concerns that we  
21 had on Path 15, overloads, and not running all of our resources  
22 out in the MP 15 area to try to mitigate the -- I'm throwing out  
23 a lot of terms here -- to mitigate the SP -- or the Path 15  
24 problems.

25 So, you're right, that we were looking at a whole  
26 gamut of things which I mentioned at the last meeting, air  
27 credits, run times, hydro conditions, availability from the  
28 north to the south, all those things.

0054

01 And looking at it, and we had a pretty good  
02 handle on what was going to happen that summer because it was  
03 light water year in the Northwest, a light water year in  
04 Northern California, and I think all -- I'm going to do some  
05 subjective thinking here that all those things went into the  
06 decision that we better come up with a tool that's going to be  
07 -- help us release as much transmission as possible, yet reserve  
08 enough back for reliability concerns on Path 15. And that was  
09 sometime in February, March, and the tool was finally released  
10 for use somewhere in April, first of May timeframe.

11 CHAIRMAN DUNN: I understand your statement that  
12 there were multiple factors, obviously, in maintaining the CBM  
13 procedure.

14 Was one of those factors any desire by CERS to  
15 have access to that capacity?

16 MR. BIBB: Setting aside a CBM to my knowledge  
17 was never a factor.

18 CHAIRMAN DUNN: I just want to clarify one thing,  
19 Jim, that you had said before with respect to when we were  
20 querying about, seem at least odd to an outside observer that  
21 CERS ends up with -- we accept the preliminary analysis of 87  
22 percent of capacity.

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23 I think you mentioned that it was the only entity  
24 willing to serve load in Northern California.  
25 Am I correct in trying to recollect your  
26 testimony of just a little bit ago?  
27 MR. DETMERS: Yes. That was the only entity that  
28 had primary responsibility for serving that utilities load. And  
0055 that was majority of the load being served in Northern  
01 California.  
02  
03 CHAIRMAN DUNN: Is it your belief that if ISO in  
04 effect said, lay terms now, "We will accept other inquiries into  
05 utilization of that capacity," that it would have been done?  
06 MR. DETMERS: If it was to serve Northern  
07 California load during that period, yes.  
08 CHAIRMAN DUNN: Was anybody else allowed to offer  
09 to serve the Northern California load other than CERS?  
10 MR. DETMERS: I'm sorry, could you try that  
11 again?  
12 CHAIRMAN DUNN: I sure will.  
13 Was any other was any market participant allowed  
14 to offer to serve the Northern California load?  
15 MR. DETMERS: I think it was very apparent what  
16 we were dealing with, and the conditions that we were dealing  
17 with, being on the TV every day during that whole time period.  
18 We were looking for solutions to the problems  
19 that we were dealing with during that whole time period. And if  
20 someone would have explored serving Northern California load, we  
21 would have explored those options. None were forthcoming to  
22 the ISO.  
23 Our lines are all open. They're open 24 hours a  
24 day to identify if they had that -- that wish.  
25 Charlie raises a good point.  
26 In the real time, offers of power into Northern  
27 California could have been accepted by the ISO through its  
28 Imbalance Energy Market. So, bids into the BEEP stack, or the  
0056 Unbalance [sic] Energy Market, was available for the whole  
01 entire time period.  
02 The BEEP stack and the Imbalance Energy Market  
03 were not shut down. Our ancillary service markets for providing  
04 that energy and capacity were available to all market  
05 participants during that time period as well. So, that could  
06 have provided access to that.  
07 Regarding the conditions that we were dealing  
08 with, not only were we putting this information out on the TV,  
09 but market notices of the staged emergencies, alerts, warnings,  
10 all of that information was readily available to all market  
11 participants.  
12  
13 CHAIRMAN DUNN: Chris.  
14 MR. SCHREIBER: How could market participants  
15 offer to provide -- offer to serve load via the BEEP stack if  
16 they believed that there was no available transmission capacity?  
17 I mean, why would they put a generator on line when there was no  
18 way to ship the power once it was generated?  
19 MR. DETMERS: Again, in real time, what is clear  
20 to all market participants is that their offers in real time are  
21 available to the full access of the transmission grid. They're  
22 not restricted by ETCs; they're not restricted by the CBMs, and  
23 in real time, they have full access if they're willing to be  
24 competitive in the BEEP stack to supply.  
25 CHAIRMAN DUNN: Mr. Drivon.  
26 MR. DRIVON: Didn't we have a hearing a while  
27 back where one of the generators, or several of them, were  
28 complaining that the BEEP stack was being ignored in favor of  
0057



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01 OOM purchases? Is this a different period of time we're talking  
02 about?  
03 CHAIRMAN DUNN: I think that was our November '01  
04 hearing that Chris had referred to earlier.  
05 MR. DETMERS: I believe there were concerns about  
06 that. I can't recall the exact hearing. My memory is short as  
07 well.  
08 But market participants' concerns, even with the  
09 ISO, of what I would call bifurcating the market into two  
10 separate elements: one, the BEEP stack; and out-of-market  
11 activities, your other activities.  
12 Not having those run simultaneously together,  
13 there are inefficiencies in doing that. And those would be the  
14 ISO's concerns as well as there are -- I would imagine there are  
15 market participant concerns with having that activity as well.  
16 MR. DRIVON: I was just trying to reconcile in my  
17 mind when you said that the real time market is always available  
18 to everybody based on the BEEP stack. I was trying to reconcile  
19 that in my mind with that testimony from the previous hearing.  
20 I guess maybe it isn't going to get reconciled.  
21 Do you understand what my confusion is, or am I  
22 so confused you can't?  
23 MR. DETMERS: I'm confused at this point.  
24 MR. DRIVON: Okay.  
25 CHAIRMAN DUNN: So we will leave it in confusion.  
26 What I'd like to do now is go on to our Number  
27 Two issue on our hearing agenda, which I think, Jim and Tracy,  
28 you guys are stepping aside at this point, I believe.

0058

01 MR. ROBINSON: Is this the --  
02 CHAIRMAN DUNN: This is the fictitious load, et  
03 cetera. We're bringing up CERS.  
04 I think there were supposed to be some ISO reps  
05 on this one, Charlie.  
06 MR. ROBINSON: We do.  
07 CHAIRMAN DUNN: Why don't we bring both the CERS  
08 representatives that are here and the ISO representatives. This  
09 is on the fictitious load.  
10 Hang around, Tracy.  
11 CHAIRMAN DUNN: Come on up, everybody. Have a  
12 seat.  
13 Before we do anything with our new cast of  
14 characters, not to suggest you folks are characters here, why  
15 don't we go around table and have everybody introduce yourself.  
16 Start here and go around so that Evelyn can get all the names  
17 down.  
18 MS. ROSTKER: Margaret Rostker, Regulatory  
19 Attorney, in-house, for the ISO.  
20 MR. McINTOSH: Jim McIntosh, Director of Grid  
21 Operations for the California ISO.  
22 CHAIRMAN DUNN: Tracy, Jim, we can skip you guys.  
23 MS. LEE: Susan Lee, Scheduling Manager, with  
24 DWR.  
25 MS. LAZIC: Zora Lazic, Consultant with DWR.  
26 [Thereupon the Court Reporter  
27 requested business cards from  
28 all the witnesses.]

0059

01 CHAIRMAN DUNN: You heard the request. It's  
02 imperative that she gets it so that transcript can be accurate.  
03 For all of our new comers to the table, Bob,  
04 let's swear everybody in. Then Chris, I'm coming over to you.  
05 [Thereupon the witnesses,  
06 MARGARET ROSTKER, JIM McINTOSH,  
07 SUSAN LEE, and ZORA LAZIC, swore

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08 to tell the truth, the whole  
09 truth, and nothing but the truth.]  
10 CHAIRMAN DUNN: Chris, let me turn back to you.  
11 We'll do the same thing on this issue. If you would, update us  
12 on the staff's investigation, and then we'll open it up to  
13 questions.

14 Chris.  
15 MR. SCHREIBER: We'll run, as I'm aware of the  
16 time, run through this pretty quickly and in as simple terms as  
17 possible.

18 In January, the Legislature authorized CERS to  
19 become the credit-worthy counterparty to the utilities. That  
20 was January, 2001.

21 Over the course of the year, there arose concerns  
22 that CERS and the ISO had developed a relationship that was  
23 inappropriate. And understand, the context of this is difficult  
24 for both parties, in large part because CERS was instructed by  
25 the Legislature via mandate, legislative mandate, to obtain  
26 least cost power.

27 And they were instructed to do so and felt  
28 that the ISO, and I paraphrase previous conversations with CERS

0060 here, that the ISO was -- my word -- profligate with their  
01 credit card, as it was described in a previous hearing.

02 Because CERS felt that the ISO couldn't itself  
03 obtain least cost power, CERS undertook an effort to obtain that  
04 power itself. And this devolved into a situation in which CERS  
05 ended up on the ISO control room floor and ultimately was the  
06 subject of a complaint by Mirant and Reliant at the end of the  
07 summer of 2001 filed at FERC.

08 When our Committee heard this testimony about  
09 this in November of 2001, arrangements were made to try to  
10 rectify the situation. And as it turns out, there were two  
11 orders in November of 2001 by FERC that dealt with this issue  
12 and proscribed behavior by CERS and the ISO. Specifically, the  
13 ISO was prohibited from using CERS as anything other than a  
14 credit-worthy counterparty in making out-of-market, or OOM,  
15 transactions.

16 So, there was a direct notice from FERC, if you  
17 will, that told the ISO to stop using CERS in any way other  
18 than, I guess, how they would use another scheduling  
19 coordinator.

20 Concurrent with this timeframe, on November 14th,  
21 the Committee has dealt with this issue as well, there was a  
22 conversation between CERS and the ISO, and staff from both  
23 sides, in which CERS was asked to submit fictitious load in  
24 order to address a reliability concern that we believe is  
25 legitimate at the ISO.

26 I don't think it's necessary to go into the  
27 details of it, but basically Path 26 was -- had become a problem

0061 because of scheduled maintenance, and the ISO concurrently was  
01 having difficulty getting generators to respond to their  
02 dispatch instructions.

03 This is kind of an understandable situation. And  
04 just as a bit of background, I think you can appreciate and be  
05 sympathetic to both parties here.

06 The generators were not being paid because the  
07 utilities were -- were simply not able to pay them. CERS was  
08 brought in to pay them, didn't trust the ISO to make those  
09 decisions, and yet the generators didn't trust the ISO to be  
10 making representations on behalf of CERS. So, many of the  
11 generators, as I understand it, requested that CERS itself  
12 actually make the calls.

13 And that's what led to do situation in which CERS

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15 was actually making out-of-market calls on behalf of the ISO.  
16 That's what was proscribed by FERC. And that's what led to kind  
17 of the troubling consequences of the November 14th call.

18 Now, in the wake of the November 14th call, in  
19 which the ISO -- in which CERS claimed that the ISO asked them  
20 to submit fictitious loads, the ISO has denied using that  
21 term. CERS has maintained that that term was used.

22 There was no resolution per se, but what we did  
23 find out is that there were several other instances after the  
24 ISO was instructed not to use CERS for OOM purchases, or OOM  
25 transactions, because they can also be sales, the ISO did in  
26 fact use CERS.

27 This all came out as a result of the Committee's  
28 investigation following the release of the Enron memos. And

0062  
01 CERS had admitted to the Committee in a Letter of Interrogatory  
02 that, yes, we did in fact, you know, maybe do something wrong;  
03 this is the circumstance; there's the details of it.

04 What led to kind of where we are now is, after  
05 the fictitious load incident was vetted, we were informed, or we  
06 found out, or simply inquired, that the ISO continued to, into  
07 2002, asking CERS to make OOM transactions.

08 When we found that out, or when we decided to  
09 ask, we sent a letter to CERS asking if this was true. We sent  
10 a letter to the ISO asking if this was true, and these were  
11 progressing on parallel paths.

12 The ISO responded back to us that, no, we weren't  
13 involved; we did not involve CERS in any OOM transactions in  
14 2002. And CERS responded back that, yes, the ISO did ask us to  
15 participate in OOM transactions in 2002.

16 CERS then provided us with audio taped  
17 conversations of situations in which the ISO asked specifically  
18 for CERS to get involved in OOM transactions. They provided us  
19 with a log of the instances in which this happened, the hours,  
20 the megawatts, et cetera, et cetera.

21 So, we were at a situation -- we're kind of at an  
22 impasse here. And that's, I think, the purpose of today. We  
23 have a letter both from Jim Detmers and a letter from the ISO  
24 CEO, Terry Winter, indicating that CERS was never involved in  
25 OOM transactions. And we have CERS on the other hand,  
26 maintaining that they were.

27 Now, the reason why this is troubling is because  
28 if it's true, on the face of it, it would appear to be illegal.

0063  
01 We've been told by ISO counsel that FERC orders have the force  
02 and effect of law, and violating them subsequently would be a  
03 violation of the law.

04 We have internal e-mails from CERS that express a  
05 clear reluctance to participate in these transactions. We also  
06 have an e-mail between the ISO and CERS, in which the ISO  
07 explains that it will no longer be asking CERS to engage in this  
08 relationship.

09 Six months later, that appears to have been not  
10 the case.

11 And so, before today's hearing we asked Charlie  
12 Robinson at the ISO to provide us with a written explanation of  
13 whether or not the 2002 OOM transactions involving CERS were  
14 untoward in any way, or if they were in fact in compliance with  
15 FERC order.

16 That does not appear to be the feeling of CERS.  
17 And from my perspective, having looked at this issue, it does  
18 not appear to be accurate.

19 CHAIRMAN DUNN: Let's go to CERS first. Zora,  
20 who wants to comment?

21 MS. LAZIC: What part would you like me to

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22 comment on?  
23 CHAIRMAN DUNN: Was Chris's description of CERS'  
24 position inaccurate in any way? If so, let's get it corrected.  
25 MS. LAZIC: No, it wasn't.  
26 CHAIRMAN DUNN: I guess that's it on that one.  
27 Let's go to the ISO. Who wants to comment here?  
28 Charlie, are you going to lead off?  
0064  
01 MR. ROBINSON: Well, I guess I can try.  
02 There were a number of statements made by Chris.  
03 Should I start off with legality, whether this is legal;  
04 whether it isn't; what the FERC order actually specified?  
05 CHAIRMAN DUNN: Let's go with the factual stuff,  
06 too, Charlie, and then we'll wind into the legal side of it.  
07 Where is it? You heard from CERS. They think  
08 Chris's description is accurate, that in fact they believe that  
09 ISO did request their involvement in OOM purchases after  
10 November '01, I think it was, and continued into '02.  
11 From ISO's perspective.  
12 MR. ROBINSON: I think we'll probably have Jim  
13 respond, but I think at least part of the response is going to  
14 be involvement in what sense.  
15 Chris has already indicated that the FERC order  
16 did not bar CERS' involvement in all respects. Obviously, the  
17 FERC order indicated that we still needed to have a credit-  
18 worthy backer for our out-of-market transactions. So, to the  
19 extent that CERS was operating as the credit-worthy backer of  
20 OOM transactions, I believe in our view that would not be  
21 illegal and would not be the type of involvement in OOM  
22 transactions that was called for in your request.  
23 In addition to that, the ISO, from time to time,  
24 goes out and canvasses a broad array of market participants to  
25 serve as counter parties in a transaction that the ISO would  
26 like to engage in. There may have been times as well when the  
27 ISO solicited CERS in addition to other market participants to  
28 engage in an out-of-market transaction.  
0065  
01 Again, that does not seem to fall within the  
02 prescription of the FERC November, orders where the clear intent  
03 of the order was that CERS, at least as they were to be treated  
04 as market participants, were to be treated like all other market  
05 participants. So, a call to CERS to engage in an out-of-market  
06 transaction would be very much like a call to anyone else to  
07 engage in a market transaction.  
08 So, I think at least in those two roles, to the  
09 extent that CERS was involved in an out-of-market transaction  
10 either as a credit-worthy backer, or as simply a counterparty, I  
11 don't believe it would be a violation of any FERC orders. And I  
12 think that's the sense that we took away from our response to  
13 the -- our response to your inquiry.  
14 CHAIRMAN DUNN: Let me make sure I understand,  
15 Charlie, because I'm going to narrow the scope of the issues  
16 we've got to debate a little bit here.  
17 What I hear you saying is, from ISO's  
18 perspective, the ISO did in fact request CERS, post-November '01  
19 to become involved in certain OOM transactions, but ISO's  
20 position is, where such requests were made, it wasn't in  
21 violation of the FERC orders.  
22 Is that a fair characterization of what you just  
23 said?  
24 MR. ROBINSON: That's a fair characterization of  
25 what I've just said.  
26 On the factual issues, I would prefer that you  
27 turn to those more familiar with the facts. That's my  
28 understanding of the facts.

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01 CHAIRMAN DUNN: And I will, Charlie. I was just  
02 trying to make sure I understood kind of the sum and substance  
03 of what you were saying.  
04 Jim, I'm assuming we're referring to you, Jim, or  
05 is it you, Jim? We're back to the original Jim  
06 Let me just pose the question very specifically.  
07 Post-November '01, did ISO request CERS involvement in OOM  
08 transactions?

09 MR. DETMERS: Yes the ISO -- but let me start by  
10 qualifying what out-of-market transactions are, the use of the  
11 term out-of-market.

12 The use of the term out-of-market is an exclusive  
13 term used by the ISO. It is what we engage in when the markets  
14 do not have sufficiency of meeting our needs to either solve a  
15 local area problem or some other resource problem. We engage in  
16 what we call an out-of-market call.

17 That out-of-market call, at least throughout the  
18 time period of 2000 and -- or 2001, came in two different forms.  
19 One, as Charlie indicated, we dealt with out-of-market activity,  
20 that CERS was actually engaged in some of that transaction  
21 because market participants would not deal with the ISO because  
22 of the credit standards and credit failings of the utilities.

23 We did have CERS engaged in out-of-market  
24 activity to be able to meet our supply demands or other  
25 localized cases, up until the time that we got down to the  
26 November time period, where we had to alleviate a transmission  
27 problem on our system. We did at that time, and times past,  
28 that -- call CERS and call other scheduling coordinators to

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01 resolve a problem in the basis of being a scheduling  
02 coordinator.

03 We had the ability under the tariff Section  
04 2351.5 to be able to engage in out-of-market activities or  
05 bilateral transactions, which are not necessarily competitive.  
06 We go after doing that to resolve grid problems or other supply  
07 problems on the system. And we did so.

08 We believe that those very much are in accordance  
09 with the tariff.

10 We do understand that there is some vagueness in  
11 the use of the different terms, and we may be at an impasse here  
12 with an understanding of what was the phone call for  
13 out-of-market. Was it being in the -- as a position of a  
14 scheduling coordinator, or was it being in the position of a  
15 credit-worthy backer?

16 The conditions that we were dealing with even in  
17 November, no one had been paid through the ISO markets from the  
18 January time period, from the initiation of CERS. That did not  
19 end until we got into December, when the initial payment went  
20 back to scheduling coordinators.

21 Scheduling coordinators did not want to deal with  
22 the ISO directly. So, we had take what actions were necessary  
23 to make sure that we could alleviate this problem.

24 We did engage with CERS to bring on the  
25 additional units. And we did have to do that. Other scheduling  
26 coordinators would not comply with our requests and our demands  
27 to be able to make the -- resolve the conditions. And so, we  
28 did engage in what we referred to an out-of-market arrangement.

0068

01 These, again, would have come in the form of either orders  
02 direct from the ISO, or requests to engage as a credit-worthy  
03 backer for the transactions that we had to have someone enter  
04 into in order to bring the units on line.

05 CHAIRMAN DUNN: Okay.  
06 CERS, response?

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07 MS. LAZIC: I think from our perspective, when we  
08 were asked to do out-of-market transactions, we didn't see a  
09 distinction from 2001, the 2001 incidents to the 2002 incidents.

10 And one of the things that we would like to make  
11 clear, and I don't think that comes across, is that when we were  
12 asked to do OOM, including in the 2001 period, it was at the  
13 request of the ISO, at the location, and in the megawatts that  
14 the ISO identified.

15 So, this wasn't something that CERS was engaging  
16 in to deal with contracts or anything else. Those allegations  
17 have been made, and we wanted to be clear. When we were asked  
18 to do OOM, we were asked. It was by the ISO. We were asked for  
19 particular megawatts and in particular locations. That occurred  
20 in 2001, and it occurred as well in 2002.

21 We found the requests in 2002 concerning because  
22 they came after the FERC decision then, after assurances that we  
23 would not be involved in OOM after that period of time.

24 CHAIRMAN DUNN: In fact, I think that assurance  
25 was also made at our November '01 hearing.

26 Charlie.

27 MR. ROBINSON: I think I can point out a  
28 distinction between 2001 and 2002. I think it goes to the

0069 01 problem that FERC was attempting to address in the November 20  
02 order.

03 By the way, I think it is important to recognize  
04 that at the time the November 14 conversation occurred, FERC had  
05 not yet issued an order that said CERS shouldn't be involved in  
06 OOM transactions, or words to that effect.

07 But in the November 20 order, it's very clear  
08 that what FERC was concerned about was CERS mixing up the two  
09 hats that it was wearing.

10 Let me back up for a second and explain what I  
11 mean by that.

12 Throughout 2001, CERS was essentially serving two  
13 functions. It was both serving the function of being the major  
14 purchaser to satisfy the net-short position of the utilities.  
15 And in that respect, it was a scheduling coordinator and a  
16 market participant.

17 The second hat that it wore was as the credit-  
18 worthy backer of the ISO's real time activities.

19 The problem evolved during 2001, with CERS  
20 essentially saying to the ISO, "We need to get access to certain  
21 confidential information. We want to find out from you how much  
22 we're short, or how many megawatts you think you're going to  
23 need in real time. We want to know what the prices are in the  
24 BEEP stack, and you need to give us this information or we won't  
25 serve as your credit-worthy backer."

26 They imposed conditions on us that required us to  
27 give them preferential access to concern information. They  
28 would then take information and, following the close of our

0070 01 hour-ahead market, they would go out and try to negotiate  
02 additional bilateral contracts in order to try to close the gap  
03 on satisfying the net-short of the utilities.

04 By doing that, they were essentially  
05 participating in a market that did not exist for anyone else,  
06 and they were circumventing the BEEP stack.

07 All of that was properly disclosed to FERC. If  
08 you'll look in the November 20 order, they acknowledge the fact  
09 that we transparently reported to them that these conditions and  
10 these demands were being made on us by CERS. And FERC  
11 essentially said, "Look, they wear two hats. It is not  
12 appropriate for them to essentially leverage their position as  
13 the credit-worthy backer of the ISO's real-time activities in

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14 order to improve their position or benefit their role as the  
15 market participant or the scheduling coordinator for the  
16 utilities' net-short position.

17 That is essentially the problem that FERC was  
18 addressing in the November 20 order. FERC did not say, or at  
19 least I don't think they meant, that CERS could never be  
20 involved in an OOM transaction.

21 The fact of the matter is, in the same order,  
22 they indicated that CERS had to be involved in OOM transactions  
23 as a credit-worthy backer. That's the effect of what they say  
24 in the order.

25 So, that's a huge difference. Ms. Lazic wants to  
26 know the difference between the request made in 2002 and 2001,  
27 the difference is that CERS wasn't being given access to  
28 information that they were then using in order to leverage their

0071 position as a market participant.

02 CHAIRMAN DUNN: Charlie, if I may, I have a few  
03 follow-up questions to the comments you just made. If it's more  
04 appropriate to any of the other ISO representatives to answer,  
05 that's fine.

06 As CERS, from your perspective, was demanding --  
07 to use your words -- preferential access, who was it that was  
08 making such requests?

09 MR. ROBINSON: If you mean which individuals at  
10 CERS, I'd have to turn to one of the other individuals. I would  
11 imagine -- I shouldn't imagine.

12 CHAIRMAN DUNN: Okay.

13 Jim

14 MR. DETMERS: Yeah. We did receive the letters.  
15 In fact -- and there is a record of the request for that  
16 specific information. I believe it did come from Pete Garris as  
17 well as Ray Heart. You can go back to the actual documents and  
18 find that.

19 We did have also requests on our operating floor  
20 for the very same information from some of the personnel. And I  
21 can't recall exactly who they are at this point. They were  
22 demanding the information.

23 One name comes to mind, and that was Terry  
24 Dennis, who was specifically demanding the information that --  
25 that we had in the BEEP stack that they were not making  
26 available to CERS during that whole time period.

27 CHAIRMAN DUNN: What time period are we talking  
28 about?

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01 MR. DETMERS: This again is the time period from  
02 about April through June or July, at which time we began to  
03 provide aggregated information to CERS of the amounts that were  
04 in the BEEP stack. These are at -- I believe they were \$150,  
05 the aggregated megawatt amounts, 150, 200, and so on, to be able  
06 to provide them some information that wasn't the exact bid  
07 information coming through the imbalanced market.

08 CHAIRMAN DUNN: When these requests or demands, I  
09 don't know how to characterize them, were being made that you've  
10 testified to, Jim, did ISO request meetings with CERS folks to  
11 talk about this?

12 MR. DETMERS: We had many conversations regarding  
13 the matter. I can't recall any one in particular, but there  
14 were a number of those, to and including, I believe, in front of  
15 you in this room --

16 CHAIRMAN DUNN: I remember that one.

17 MR. DETMERS: -- where the requests were being  
18 made.

19 I was also requesting to make sure that we had  
20 credit-worthy backing of the activities in the stack as well,

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21 so that we didn't upset the conditions that we were dealing  
22 with.  
23 CHAIRMAN DUNN: Was the ISO Board ever involved  
24 in those discussions?  
25 MR. ROBINSON: Yes.  
26 CHAIRMAN DUNN: Who from the Board?  
27 MR. ROBINSON: Michael Kahn was involved in  
28 certain decisions. And in -- the ISO management and the Board  
0073  
01 made the decision to make a filing at FERC, identifying the  
02 information that was being requested of us by CERS, and the  
03 conditions that they were placing on their willingness to be a  
04 credit worthy backer.  
05 CHAIRMAN DUNN: When was that FERC filing made,  
06 Charlie, rough approximation.  
07 MR. ROBINSON: I'm thinking it was April, 2001.  
08 That's right.  
09 CHAIRMAN DUNN: That was both an action by senior  
10 management with approval by the Board?  
11 MR. ROBINSON: Exactly. We were very  
12 uncomfortable with the fact that CERS insisted upon being on the  
13 control room floor. And that really precipitated the need to  
14 make a filing.  
15 CHAIRMAN DUNN: Chris, you had a follow-up?  
16 MR. SCHREIBER: Yes. I think it's worth  
17 introducing a couple comments into the record here from e-mails  
18 and what not.  
19 This was an e-mail from Ms. Rostker to Valla  
20 Hoffman. This is on December 11th of 2001. It says,  
21 "Valla, yes, by this electronic  
22 e-mail, I affirm the ISO's  
23 intention to stop contacting  
24 CDWR/CERS for out-of-market,  
25 [in parens] (OOM) purchases as  
26 may be needed to assure  
27 operational control and  
28 reliability of the ISO control  
0074  
01 grid, beginning on December 13th,  
02 [basically] 2001."  
03 So, there was a stated -- it was stated by  
04 counsel to the ISO -- of the ISO to CERS that they were not  
05 going to ask for CERS' involvement in OOM transactions.  
06 Now, I understand that the distinction that's  
07 being made here is that CERS is this two-headed beast, and half  
08 of it is the credit-worthy counterparty, and half of it is --  
09 CHAIRMAN DUNN: The word "beast" was meant with  
10 all due respect.  
11 MR. SCHREIBER: Yes, I meant that in the best  
12 possible way, thank you, Mr. Chair.  
13 There are other kind of concerns given the e-mail  
14 record in this case. Number one, if the ISO -- if the ISO did  
15 make a distinction between the two roles that CERS was to play,  
16 they did not allay any concerns that CERS had in performing this  
17 role. There are e-mails between Pete Garris internally in which  
18 he very much avers that he believes that it's illegal, against  
19 the tariff, and that CERS was not comfortable doing it.  
20 I guess the other couple important points to make  
21 here. On June 18th, as I mentioned, we sent letters both to  
22 CERS and to the ISO, asking them to answer the question: Did  
23 CERS get involved in OOM transactions in the year 2002, at the  
24 ISO's behest?  
25 And the responses that we got back both from Jim  
26 and from Terry, Terry Winter and Jim Detmers, is that to our  
27 knowledge, CERS has not been involved in any out-of-state OOM



28 transactions on behalf of the ISO in any capacity, other than  
0075 its role as credit-worthy counterparty.

02 Now, to me, if that was a legal hair that they  
03 were trying to split in answering this question, clearly the  
04 Committee and me personally had further questions about that. I  
05 didn't see that as being particularly clear or forthright about  
06 what role CERS may have played.

07 And the other letter that we got back from Terry  
08 Winter, which is,

09 "Based on our information to  
10 date, in 2002 CERS has not been  
11 involved in any within control  
12 area OOM transactions on behalf  
13 of the ISO in any capacity."

14 Now, we have a boombox, and we've got 34 audio  
15 files, and we can play, you know, two or three of the  
16 conversations between the ISO and CERS in which it's very clear  
17 that the ISO is asking CERS to be involved in OOM transactions.  
18 Now, this letter does not make any distinction as Jim's letter  
19 did, the letter from Terry Winter.

20 I guess I'm troubled by a number of different  
21 points. We were willing -- we were willing from an  
22 investigation standpoint to say that the FERC order, as Charlie  
23 points out, was on November 20th. The fictitious load call was  
24 on November 14th.

25 There would have been no way to have predicted  
26 the FERC's order. Therefore, you know, we were willing to say  
27 the fictitious load call wasn't in violation of the FERC order,  
28 but it was an inappropriate way to have handled the reliability

0076 need.

02 Well, we can't even get the ISO to acknowledge  
03 that fictitious load was used. And I'm going to quote here from  
04 another letter that Jim Detmers signed on June 18th of 2002.

05 "We posed the question, did ISO  
06 staff request, [in quotes]  
07 'fictitious load' prior to the  
08 recorded conversation or at any  
09 time other than in the recorded  
10 conversation either from CERS or  
11 any other market participant?"

12 And the response,

13 "Based upon our investigations  
14 to date, and consistent with  
15 explicit statements in the  
16 interim report enclosed with  
17 our prior letter, we have found  
18 no evidence that ISO staff  
19 requested scheduling a  
20 fictitious load by CERS prior  
21 to or during the recorded  
22 conversation at issue."

23 CHAIRMAN DUNN: Let me just wrap this up.  
24 From CERS, and Zora, I'll pose it to you. Does  
25 CERS stand by the position that the phrase "fictitious load" was  
26 used in those conversations?

27 MS. LAZIC: Absolutely.

28 CHAIRMAN DUNN: Jim, you heard Chris's concern  
0077

01 about your letter versus Terry's letter, et cetera. Do you have  
02 comments you'd like to offer?

03 MR. DETMERS: Yes. With regard to fictitious  
04 load, again, the ISO stands with the records that have been  
05 presented to you. The ISO did not make, to our knowledge, that

06 statement.

07 We do know that you, Ms. Lazic, made that  
08 statement of fictitious load to us on a phone call, but again,  
09 what our focus was and what we were dealing with was the  
10 management of the grid. It was not even dealing with balancing  
11 of the load either.

12 And so, I think there was a lot of  
13 miscommunication that was going back and forth on this  
14 particular phone call, whereby CERS was looking for certain  
15 elements and certain things to come from the ISO. The ISO was  
16 expecting cooperation in response to its requests.

17 This, again, was well in advance of the actual  
18 operating hour, or well in advance of any time period where  
19 balanced schedules had to be submitted. Balanced schedules only  
20 come in in the day-ahead process. I believe this phone call was  
21 at least two days prior to the actual balancing of load that has  
22 to occur in the balancing requirement.

23 I believe that there were discussions on this. I  
24 know that there was a lot of confusion regarding this. But  
25 again, the ISO was in a position, and is the only grid manager  
26 with the position to be able to deal with the concerns of the  
27 grid.

28 So, at that time we had to take what actions were  
0078 necessary to be able to alleviate that.

01 CHAIRMAN DUNN: Let's take five minutes for  
02 Evelyn to get a rest and change paper. We'll get back here in  
03 five minutes. We're going to keep it to about five minutes  
04 because I know a number of folks have some scheduling conflicts  
05 coming up shortly, and we want to try to wrap it up. So, five  
06 minutes, everybody.

07 [Thereupon a brief recess  
08 was taken.]

09 CHAIRMAN DUNN: Let's get back.  
10 Charlie, what I'd like to do is ask Ziad to come  
11 up as well, too, because we have some questions to pose to him  
12 as well.

13 MR. ROBINSON: Could I make a couple of points on  
14 the last subject we talked about, which was the fictitious load  
15 point?

16 CHAIRMAN DUNN: Yes.  
17 MR. ROBINSON: The first thing I wanted to say  
18 is, I think, as you know, we conducted kind of a preliminary  
19 investigation into that issue and that conversation.

20 But then our Board commissioned an outside  
21 investigator to take over that investigation. So, I did want to  
22 make it known to you that, to some extent, our responses are  
23 preliminary because the investigation is still ongoing.

24 CHAIRMAN DUNN: Yes, sir.  
25 MR. ROBINSON: The second point I wanted to  
26 make, and I think Chris might be able to help me out here, I  
27 believe that I saw documents that came from this Committee in  
28

0079 which CERS had indicated that fictitious load conversations  
01 occurred 30 times, and then there was another document that said  
02 20 times, and then another document that said one. I think  
03 that's right.

04 MR. SCHREIBER: It actually -- CERS had never  
05 maintained that the term fictitious load had been used 20 or 30  
06 times. In fact, the November 14th call was the first time CERS  
07 claimed that fictitious load had been used.

08 What CERS had claimed is that the ISO had asked  
09 CERS for load, to submit schedules for load it did not intend to  
10 serve. And that had occurred originally, we were told, two  
11 dozen times in our original call with CERS, and that number was  
12

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13 adjusted downward, I think, to --  
14 MR. ROBINSON: Approximately 20, and then I  
15 thought it had been adjusted down to one.  
16 In any event, I just wanted to make a point for  
17 the Select Committee to keep that in mind.  
18 MR. SCHREIBER: Right. It was just -- it was  
19 dropped down to one -- excuse me. The number of times was  
20 dropped down to 20 from two dozen.  
21 But the fictitious load was remarkable, I think,  
22 to CERS as well as the Committee.  
23 CHAIRMAN DUNN: And what I had told Zora during  
24 the break is that I've got a few preliminary questions. I want  
25 her to respond generally, as ISO has from its perspective, on  
26 this issue relating to fictitious load.  
27 Ziad, we've got to get you in line with everybody  
28 else here. Bob, we've got to swear Ziad in. He's been through  
0080 it before, but we've got to get him under oath here.  
01 [Thereupon the witness,  
02 ZIAD ALAYWAN, swore to tell  
03 the truth, the whole truth,  
04 and nothing but the truth.]  
05 CHAIRMAN DUNN: Ziad, thanks for coming up. I  
06 actually have the same questions for a few here, and you're  
07 included in it, Ziad. After that, I don't need you up here any  
08 more unless you want to stay to offer additional comments as we  
09 go on.  
10 There's obviously a debate that's raging here  
11 about whether in fact fictitious load was used or not used. So,  
12 I simply want to get everybody on record under oath so that we  
13 can kind of frame it up for future reference, use, whatever the  
14 case may be.  
15 My questions are going to relate to November  
16 14th. As I think everybody at the table is aware, there were  
17 two phone calls that are in question on that given day. One, a  
18 recorded phone call, which I think we all agree, ISO did not  
19 make a request using the word "fictitious load" in that recorded  
20 phone call. But there was also a phone call involving the same  
21 individuals -- there may have been an add-on or two, lawyers got  
22 involved afterwards -- but involving basically the same  
23 individuals shortly before that, what I refer to as the  
24 unrecorded call.  
25 Everybody understand what I'm referring to now?  
26 The reason, Ziad, that I approach you -- and I'm  
27 just going to go this way. I'm not picking on you. Everybody  
0081 else is going to get it -- is that the ones from ISO that were  
02 involved with that call were primarily Ziad, Jim, Margaret, and  
03 Tracy. I think my recollection of the situation is correct.  
04 So, let me just start with you, Ziad, basically  
05 two or three questions.  
06 At any time in the unrecorded phone call of  
07 November 14th, did you use the term "fictitious load?"  
08 MR. ALAYWAN: No, I did not.  
09 CHAIRMAN DUNN: At any time on that phone call  
10 did anyone else from ISO use the phrase "fictitious load?"  
11 MR. ALAYWAN: I do not -- I do not recall anyone  
12 else did.  
13 CHAIRMAN DUNN: Margaret, same questions.  
14 Did you use the phrase "fictitious load" at any  
15 time during the unrecorded phone call of November 14th.  
16 MS. ROSTKER: No, I did not.  
17 CHAIRMAN DUNN: Do you recall if anyone from ISO  
18 used that phrase in the unrecorded phone call?  
19 MS. ROSTKER: Not to my recollection.

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20 CHAIRMAN DUNN: Jim, did you use the phrase  
21 "fictitious load" at any time during the unrecorded phone call  
22 of November 14th?  
23 MR. McINTOSH: No, sir.  
24 CHAIRMAN DUNN: Did anyone from ISO, other than  
25 yourself, use the phrase "fictitious load" on that phone call?  
26 MR. McINTOSH: First of all, I said I didn't say  
27 that in my -- in my response the first time.  
28 CHAIRMAN DUNN: No, I think I asked a different  
0082 question. Let me restate it for you, maybe I blew it and I'll  
01 try it again.  
02 Did anyone else, other than you, from ISO use the  
03 phrase "fictitious load" during the unrecorded phone call?  
04 MR. ROBINSON: And you're not suggesting that he  
05 did.  
06 CHAIRMAN DUNN: No, he's already testified he did  
07 not.  
08 MR. McINTOSH: And the answer to the second  
09 question is no.  
10 CHAIRMAN DUNN: Tracy, did you use the phrase  
11 "fictitious load" at any time during the phone call, unrecorded  
12 phone call, November 14th?  
13 MR. BIBB: No, I didn't.  
14 CHAIRMAN DUNN: Did anyone from ISO -- exclude  
15 yourself, you already said no -- use the phrase "fictitious  
16 load" during the unrecorded phone call of November 14th?  
17 MR. BIBB: I don't recall anybody using that  
18 word.  
19 CHAIRMAN DUNN: Zora, Susan, I think you two were  
20 also on unrecorded phone call, if I'm not mistaken.  
21 Let's go with you first, Zora.  
22 MS. LAZIC: I was on the unrecorded phone call.  
23 CHAIRMAN DUNN: Did someone from ISO use the  
24 phrase "fictitious load" during the course of the unrecorded  
25 phone call of November 14th?  
26 MS. LAZIC: Yes.  
27 CHAIRMAN DUNN: Do you know who it was that used  
0083 that phrase?  
01 MS. LAZIC: I don't recall the precise person,  
02 but --  
03 CHAIRMAN DUNN: Male or female?  
04 MS. LAZIC: I don't -- I really don't recall. I  
05 have a sense one of two people, but I don't recall.  
06 CHAIRMAN DUNN: I'm not asking you to speculate.  
07 MS. LAZIC: I don't recall.  
08 CHAIRMAN DUNN: Susan, let's go to you. Did  
09 anyone from ISO use the phrase "fictitious load" during the  
10 unrecorded phone call of November 14th?  
11 MS. LEE: Yes, they did.  
12 CHAIRMAN DUNN: As you sit here today, do you  
13 recall who it was from ISO that used the phrase "fictitious  
14 load" during the unrecorded conversation on November 14th?  
15 MS. LEE: I don't recall the specific individual.  
16 CHAIRMAN DUNN: Who else from CERS was involved  
17 in the unrecorded phone of November 14th?  
18 MS. LEE: In addition to Zora and myself, it was  
19 also Chris Smith and a Jee-Hi Park.  
20 CHAIRMAN DUNN: And do you know if either one of  
21 them, I'm assuming facts that haven't been provided by them, but  
22 let's just assume their testimony would be consistent with yours  
23 on the fact that the "fictitious load" phrase was used, do you  
24 know if they have a recollection of who they believed used that  
25 phrase from ISO?  
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MS. LEE: I don't believe so.

CHAIRMAN DUNN: All right.

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01 Zora, I had said to you during quick break that I  
02 would like to hear just general comments from you from the  
03 perspective of CERS on what ISO had described with respect to  
04 the OOM issues and so forth that we've been discussing, please.

05 MS. LAZIC: All right.

06 With respect to the OOM, and I think probably  
07 responding to Mr. Robinson, we did see a difference, and part of  
08 my issue is also with how Mr. Robinson characterized what was  
09 going on in 2001.

10 We were doing a lot of things on behalf of load,  
11 and trying to manage as best as we could both the prices and  
12 serving load.

13 But the distinction that we draw is, we did all  
14 of that prior to real time. We did that through the hour-ahead  
15 market and the day-ahead market.

16 It was after that time that we were asked by the  
17 ISO to engage in OOM. That had nothing to do with any  
18 information we had, didn't have, who was where, what, or  
19 anything else. That was just simply a request that came after  
20 we had put in our schedules to do something on behalf of the ISO  
21 in the megawatts quantities and location that the ISO  
22 identified. So, that was what was going on in 2001 with respect  
23 to OOM.

24 We had understood the FERC order to say that we  
25 were not to be involved in those transactions.

26 And after that time, we had also understood the  
27 credit-worthy aspect to be covered by us. And all the other  
28 parties having resolved the payment issues, the ISO was now

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01 giving us the bills, and we were paying on the bills, and so  
02 there ought not to have been that aspect.

03 I'm not aware to what extent other scheduling  
04 coordinators may have been putting pressure on the ISO, or  
05 causing them concerns, problems, and not wanting to deal with  
06 them, but for some period of time, all requests to do OOM  
07 stopped, and then they started again.

08 That did cause us concern, and we did report it  
09 to FERC, because it caused us concern. And we had understood  
10 that we were not to be involved, so we did disclose that to FERC  
11 at the time as an indicator of our concern and wanting to be  
12 open, that we had been asked, that we had complied with those  
13 requests.

14 And we complied with those because we had made a  
15 decision that if the ISO said we need it for reliability, and if  
16 they were going to ask us for those things, and also we wanted  
17 them to order us, so we would ask them for those. And after a  
18 while, we stopped asking for the order. We just said, "Okay, is  
19 it for reliability?" And we decided that we would let them make  
20 the reliability call, and we would comply with what the ISO felt  
21 that they needed for reliability.

22 At no time were we -- in anything that we've said  
23 are we suggesting that the ISO did not genuinely need whatever  
24 it was they were requesting us to do. I think -- I personally  
25 think they were trying to manage as best they could, and so this  
26 doesn't go to the legitimacy of their requests. So, we don't  
27 take issue with that, and we left all of that to them.

28 But it was the reliability that got us doing what

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01 they wanted us to do. Then in 2002, when we thought that was  
02 something we thought we weren't supposed to be doing, we  
03 reported that to FERC so they would be aware of what was going  
04 on.

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05                   We were also concerned that the -- from our  
06 perspective, the ISO was not, it seemed to us, not being open  
07 about what was happening, and we wanted that to be above board,  
08 open, so that if we're doing something, okay, we're doing it.  
09 You need us to do it; we believe you need us to do it, but  
10 that's why we're doing it, because you've asked us. We're not  
11 doing something strange. You've asked us to do something, and  
12 we're complying with your request. That was the OOM  
13                   With respect to the -- I don't know if you want a  
14 comment on the -- well, let me stick with the OOM  
15                   We also expected, in terms of are we being  
16 treated as any other scheduling coordinator, I agree that the  
17 ISO does have the ability, and it obviously does in its tariff,  
18 to request and direct scheduling coordinators to do particular  
19 things when they're in particular conditions. So, some of those  
20 things, and I think Jim probably quoted the section in the  
21 tariff where that occurs, some of those things include issuing  
22 dispatch instructions to reduce generation or to reduce imports.  
23 So, those would be the kinds of things that I would expect the  
24 ISO to be issuing instructions over with respect to -- for  
25 specifically, that deals with over-generation conditions.  
26                   But that's quite different from asking us, for  
27 example, to make a sale on their behalf. So, that to me is  
28 saying -- and maybe they were asking other scheduling  
0087 coordinators to do that, but that is not one of the things  
01 that's outlined in the tariff sections and in the various  
02 protocols that the ISO has. They do have the ability to sell  
03 themselves, but it was specifically that sale that they were  
04 asking us to do that we thought FERC was referring to in its  
05 earlier decision.  
06                   So, to me there's a difference in what are the  
07 things that the ISO does do, and probably does ask other SCs to  
08 do, and would not be unusual.  
09                   So, for example, our requests, since we don't  
10 have any generation, we would not expect a request to cut down  
11 generation. We do have schedules, for example, for exports or  
12 imports, so that would be something that they would -- I would  
13 expect to see in the normal course of an overgen [sic]  
14 condition, where they're not able to manage it, where they don't  
15 have enough bids. And their protocol goes through the various  
16 steps that they're required to go through, or ought to go  
17 through, and they're not required. They can skip some of those  
18 steps, but it doesn't say that they can ask somebody else to  
19 make sales on their behalf, for example.  
20                   So, cutting a schedule, that's something where we  
21 would cut our schedule. That would be similar to a generator,  
22 and asking them to take down their generation or increase their  
23 generation. Those are the kinds of things that I would expect  
24 to see, and that I would expect them to be doing. But again,  
25 not to do this, or make a sale or a purchase.  
26                   The sale was also a surprise to us because we  
27 didn't think that the sale would have a credit-worthy aspect to  
0088 it. We were being asked to make sales.  
01                   With respect to the fictitious load conversation,  
02 that's something that I recall very well, and quite in a lot of  
03 detail. The fictitious load phrase was spoken by somebody at  
04 the ISO. I remember it very well because Chris, Susan and I  
05 were sitting in, I think, Susan's office. We all looked at each  
06 other. And I felt quite strongly wow, and I didn't understand  
07 what the word was because I had never heard it before.  
08                   I looked to Susan and Chris, and we all looked at  
09 each other very puzzled. And I remember thinking, "Oh good,"  
10 because I thought I had missed something. I've been in this

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12 industry for 10, or 15, or 500 years, and I was -- I'd never  
13 heard that phrase before.

14 I recall asking --

15 CHAIRMAN DUNN: Let the record reflect, it's  
16 probably not 500 years, Zora.

17 MS. LAZIC: It feels like that.

18 I recall then asking them to repeat that because  
19 I didn't understand, and I didn't really know what it was that  
20 they had said because I hadn't heard the term. They repeated  
21 fictitious load.

22 We said we didn't know what that was, and this  
23 arose because the ISO explained that they needed us to do some  
24 scheduling. And there was a discussion prior to that, where I  
25 do recall also saying -- questioning why they were calling us.  
26 And I recall quite a debate between Ms. Rostker and I about why  
27 were they calling us. Why -- and I had asked, why don't you  
28 order the units on, do something else? Why is that you need to  
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01 call us to schedule this minimum run in? You can order the  
02 units on.

03 The response that we got was, we have, and  
04 they're not going to.

05 And I said, okay, you can file with FERC. There  
06 are a lot of things that you can do, and you can take actions,  
07 and there's enough time because it's not this instant, this  
08 second; it's tomorrow, the day after, the day after that. So,  
09 there are actions that you can take, and including things that  
10 I've said for sometime, which is, you can publish what's going  
11 on, and make public what's going on. You can -- there are a  
12 number of things you can do, and we didn't understand why we  
13 were being asked to do this because we thought there were other  
14 things that they can do. So, that's another piece of this whole  
15 conversation that I recall.

16 Ms. Rostker responded that we were being treated  
17 just like any other SC, any other scheduling coordinator, and I  
18 recall that I said, no, we're not, because you don't ask another  
19 scheduling coordinator to schedule somebody else's load. That's  
20 not treating us like any other scheduling coordinator.

21 And she quoted the November, I think, the  
22 November 7th, I believe it was the November 7th order, saying  
23 that they had to treat us like any other SC.

24 So, there was quite a heated debate on that.  
25 When the fictitious load aspect came up, we also -- and that was  
26 because we said, look, we don't have room to schedule this in  
27 because we have already made all of our arrangements, and we  
28 match with what we are anticipating our requirements to be.  
0090

01 The ISO indicated that we could just -- just get  
02 rid of it, and we didn't want to do that because we were  
03 concerned about the financial impact that that would have. We  
04 would then have to sell off something, and then not only sell  
05 that off, but then buy what they were asking us to schedule.

06 And that was when they offered as an alternative,  
07 you could schedule it through fictitious load. That was when we  
08 looked at each other, and we didn't know what they were talking  
09 about, asked them to repeat it.

10 Then we also -- we then responded as well that we  
11 actually -- we don't know what you're talking about, because we  
12 don't have any load to schedule. CERS does all their schedules  
13 through the inter-SC trades, the inter-scheduling coordinator  
14 trades. So, when we have our generation, the generation through  
15 the contracts that we have, we do that as a trade, and we match  
16 it with a trade from the investor-owned utilities who are  
17 actually scheduling the load.

18 So our comment was, we don't have any load to

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19 schedule. We don't schedule load, so we don't know how to do it.  
20 And the response from the ISO was, just put in a  
21 schedule.

22 And I again recall Chris and Susan and I were  
23 looking at each other and thinking we'd -- and Chris said, I  
24 don't know how to do that. Then the ISO said, okay, you know,  
25 we'll give you a call, and somebody will tell you how to do  
26 that, and we'll work through the mechanics.

27 And then we started another discussion, which  
28 was, alright, look, if you want us to do this -- and this was me

0091 talking -- I need you to -- can you please confirm in writing  
01 that one, this is for reliability, and that you want us to  
02 schedule fictitious load.

03 And Ms. Rostker said no, because this is not what  
04 we do with any other SC, so we're not going to do that because  
05 that's -- you're just like another SC, and then again this was  
06 -- no, we're not like any other SC because you're not asking any  
07 other SC to do this.

08 I then also suggested, well, can you then --  
09 doesn't have to be a note from your legal counsel; it can be  
10 simply an e-mail. And I think I suggested it can be from Ziad,  
11 or Mac, or anyone, to Chris or Susan, and just confirm that it's  
12 reliability and what you want us to do.

13 And the answer back to that was no again. And  
14 there was again a heated debate of why not, why can't we have  
15 it, and it was at that point that Ms. Rostker said, well, Zora,  
16 you're not a real attorney anyways, so don't you guys have a  
17 real lawyer there somewhere?

18 And that was when we went and got Jee-Hi Park,  
19 who is our counsel. She joined the call. We also had some  
20 further discussions --

21 CHAIRMAN DUNN: Still unrecorded.

22 MS. LAZIC: Still unrecorded. And I recall  
23 shaking my head, no, when some of the discussion was going on,  
24 and indicating we need it in writing because it just sounded  
25 wrong.

26 We had made the decision that if the ISO says  
27 reliability, and they tell us to do it, we'll do what they tell

0092 us to do, but it sounded wrong. And so, I know that I wanted it  
01 in writing. And if they wanted to tell me in writing that they  
02 wanted to do that, then that's what we would do.

03 We then went to the recorded line and --

04 CHAIRMAN DUNN: Who made the request to go to a  
05 recorded line?

06 MR. LAZIC: Jee-Hi Park.

07 CHAIRMAN DUNN: Before you go on, let me just  
08 proceed to a question.

09 The recorded call, I believe the time is on it;  
10 isn't it, Chris?

11 What time that call occurred; do you recall,  
12 Zora, approximately what time the recorded phone call occurred?

13 MS. LAZIC: 5:00 p.m.

14 CHAIRMAN DUNN: Tracy?

15 MR. BIBB: It was late afternoon. It was 4:30,  
16 5:00 o'clock, somewhere in there.

17 CHAIRMAN DUNN: That's the recorded one.

18 How much before the recorded phone call did the  
19 unrecorded phone call occur?

20 MS. LAZIC: It occurred for a period of time.  
21 Once we finished that, we just moved directly into the traders  
22 area and made that phone call within minutes of that call.

23 CHAIRMAN DUNN: So the unrecorded phone call that  
24 we've been discussing at length was basically minutes before the  
25



26 recorded phone call.  
 27 MS. LAZIC: Right.  
 28 CHAIRMAN DUNN: Tracy, do you agree?  
 0093  
 01 MR. BIBB: Yes.  
 02 CHAIRMAN DUNN: Zora, my apologies for  
 03 interrupting.  
 04 MS. LAZIC: There was also a discussion on the  
 05 unrecorded call as well as to how this would work out in  
 06 settlement, and who was going to be paying for what, and how are  
 07 we supposed -- what we are on the hook for, what are we not on  
 08 the hook for, what are the additional charges. So, there was  
 09 some issue on the settlement discussion.  
 10 I did not pay much attention to that issue.  
 11 CHAIRMAN DUNN: Don't worry, Margaret, I'll give  
 12 you an opportunity to respond. Obviously there were some  
 13 descriptions of the phone call that you may wish to comment on,  
 14 but I want to turn it over to Mr. Drivon because he has  
 15 questions, too.  
 16 MR. DRIVON: The Senator asked a very specific  
 17 question, whether very specific words were used.  
 18 I would like to expand that slightly and ask a  
 19 question of each of you who previously responded.  
 20 Do you recall any part of the unrecorded  
 21 conversation that we've been talking about as having dealt with  
 22 a request of CERS that they schedule load that didn't exist, as  
 23 opposed to using the words, "fictitious load?" Anybody remember  
 24 that anything like that was a part of the conversation?  
 25 The record will reflect four heads shaking.  
 26 As I understand it, part of the justification for  
 27 involving CERS in some capacity in OOM transactions in the year  
 28 2002 is that the ISO did not believe that CERS was similarly  
 0094  
 01 situated to the other scheduling coordinators; is that correct?  
 02 Is that part of your testimony?  
 03 MR. ROBINSON: Yeah, I believe that there were  
 04 certain transactions in which suppliers indicated that they  
 05 would not deal with the ISO, so the ISO had to involve CERS.  
 06 And in that respect, I believe that CERS essentially was serving  
 07 as the credit-worthy backer of a real-time transaction that the  
 08 ISO was endeavoring to enter into.  
 09 MR. DRIVON: And that argument, meaning that they  
 10 were not similarly situated, CERS was not similarly situated,  
 11 was an argument that you made to the FERC in response to  
 12 Mirant-Reliant's filing; isn't it?  
 13 MR. ROBINSON: I don't know.  
 14 MS. ROSTKER: I'll take a stab at answering that  
 15 and clarifying it.  
 16 CERS is a scheduling coordinator  
 17 indistinguishable from other scheduling coordinators, and is  
 18 bound in our tariff to comply with the rules that apply to all  
 19 scheduling coordinators.  
 20 CERS, uniquely to any other market participant,  
 21 also serves a second legal function under FERC orders and state  
 22 law that CERS served as the credit-worthy backer for real-time  
 23 imbalance energy market transactions and all ISO transactions  
 24 with third parties.  
 25 Thus, I think there may be some of the -- easy to  
 26 slip into the confusion and slang of the terminology. CERS is  
 27 indistinguishable in its role of responsibilities, rights, and  
 28 obligations as a scheduling coordinator.  
 0095  
 01 Second role of CERS during the period from  
 02 January 17th, 2001 through midnight of December 31st, 2002, and  
 03 continuing to date because FERC has never cancelled the

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04 obligation but we have one, CERS stands as the credit-worthy  
05 backer to ensure the reliability purchases that the ISO makes.  
06 Also -- thank you -- just to also further clarify  
07 there is an order that we not pass -- talk past each other to  
08 make efficacious use of your time.  
09 When we talk about OOM, or out-of-market  
10 transactions, the ISO tariff is extremely clear. The ISO alone  
11 has the authority to engage in out-of-market transactions.  
12 That's set forth specifically in the tariff.  
13 Industry insiders, including myself, use that  
14 often as slang when we talk about when we are needing to sell  
15 energy because we are in over-generation, or purchase energy and  
16 we're in under-generation and we do not have enough power in the  
17 under-generation situation in the real-time imbalance energy  
18 market, and we are canvassing our market participants for those  
19 who would help us.  
20 When we directly find someone, and we -- let's  
21 just pick name like Salt River, or Tucson Electric, or Mirant,  
22 or Bonneville, or PacifiCorp., IdaCorp, anyone -- when we find  
23 somebody who can buy power from us, take it off our grid so we  
24 stay balanced, or find someone who can sell power to us because  
25 we need it to meet the load that's going to show up in real-time  
26 that we very accurately -- our forecasts are accurate within  
27 four percent over the four years of actual load showing up --  
28 when we engage in those, that's a true OOM transaction and we  
0096 indeed have another section in our tariff that says how we pay  
01 for it.  
02  
03 There's no such thing as an OOM transaction  
04 between two scheduling coordinators. What we have between two  
05 scheduling coordinators is called an inter-SC trade. And that  
06 is specifically set forth in our tariff, and it's specifically  
07 invoiced and paid in a different way.  
08 We, as a matter of tariff, tariff protocol and  
09 procedure, issue market status reports when we're in over and  
10 under generation, alerting our market that we need to sell off  
11 energy to balance the grid, or buy energy to serve load that's  
12 going to show up in real time. And we invite everybody who has  
13 any power that they can sell to us to bring it in or to schedule  
14 it in.  
15 If we're in over-generation, we invite everybody  
16 who may be interested in taking power from us to step forward  
17 and so signal. And we issued notices to that.  
18 When we contact CERS, we can contact them in  
19 either their capacity as a credit-worthy backer or as a  
20 scheduling coordinator.  
21 In the period that we are talking about here in  
22 late November recall, please, no one in our market had been paid  
23 for one year.  
24 CHAIRMAN DUNN: I don't mean to interrupt you,  
25 but a lot of what you've been saying we're already familiar with  
26 and we already covered.  
27 And I know Mr. Drivon has a specific line of  
28 questions he wants to follow. I'm not trying to cut you off.  
0097  
01 MS. ROSTKER: I'll just wrap it up very quickly.  
02 When we contact scheduling coordinators, as is  
03 our custom, we call up those that we have good reason to believe  
04 on the basis of what we know of their schedules and their  
05 generation, and their load if they're load-serving entities, and  
06 ask if they can engage in an OOM transaction. They say, "Yes,"  
07 or they say "No, we don't think we'll be paid. Tell CERS to  
08 assure us." Or they say, "No, we'll do it with CERS."  
09 We will contact CERS, and we did, and the record  
10 will show it, and our slick logs that we've provided to you show

11 the different parties we call.

12 And when ultimately a party is agreeing or buy or  
13 sell as we need but only through a CERS transaction, it's an  
14 inter-SC trade, and that's lawful and permitted under the  
15 tariff.

16 MR. DRIVON: What has me a little confused, seems  
17 to be common with me, is that in the very beginning of this  
18 discussion, I thought Mr. Robinson said that the reason that  
19 CERS was not -- or the other scheduling coordinators were not  
20 treated the same as CERS is because they weren't similarly  
21 situated. We're talking about as it relates to the issue of  
22 these OOM transactions and related points.

23 And further, that the distinction was that they  
24 were, in addition to being scheduling coordinators, a credit-  
25 worthy backer that you've just been talking to us about, and  
26 that that was relevant to the issues that had been covered by  
27 the November 20th FERC order.

28 And then I read the November 20th FERC order on  
0098

01 Page Ten, where it says,

02 "We disagree with the ISO's  
03 argument that DWR CERS is not  
04 similarly situated to other  
05 scheduling coordinators."

06 And they finish that paragraph by saying,

07 "The fact that complainants are  
08 not credit worthy backers or  
09 guarantors of the ISO's real-time  
10 operations is irrelevant to our  
11 determination in this proceeding."

12 And I was having difficulty in reconciling that  
13 finding and part of the FERC order with what Mr. Robinson had  
14 told us was the justification for the 2002 activities concerning  
15 CERS on this point.

16 MR. ROBINSON: First of all, I think that my  
17 comment about CERS not being similarly situated related to the  
18 prior issue. I think I was making a general observation with  
19 respect to capacity benefit margin. I think that's what the  
20 record will show, but perhaps not. So, that's response number  
21 one.

22 I think that FERC was very clear in saying that  
23 in certain respects, CERS was serving as a market participant,  
24 in certain respects it was serving as a credit worthy backer.  
25 And that because it wore two hats in certain circumstances, that  
26 it had to be treated like any other scheduling coordinator.

27 But I would also say that to the extent that it  
28 was serving only one function, and that function being the  
0099

01 credit-worthy backer, it did have a unique role in the  
02 California markets.

03 And I think that if you look at the excerpts that  
04 I've provided to the Committee, the FERC order makes it  
05 abundantly clear that their concern was, to the extent that DWR  
06 was procuring energy in conjunction with its role as a  
07 scheduling coordinator, it needed to be treated like any other  
08 scheduling coordinator. And it specifically limited its  
09 prohibition to that aspect of its role.

10 MR. DRIVON: Well, I thought that we had been  
11 talking about the further interaction between the ISO and CERS  
12 as it related to the activities covered by the November 20th  
13 order, when we had been talking about that in the beginning.  
14 But then, perhaps I was wrong, and my reading of the record  
15 later will show me that I was.

16 MR. ROBINSON: And me as well.

17 But I do think that with respect to the May-June

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18 timeframe, I indicated that CERS was approached for OOM calls in  
19 two respects: One as a credit-worthy backer; and the other was  
20 as a potential counterparty in an OOM transaction like any other  
21 scheduling coordinator.

22 MR. DRIVON: Who makes the determination as to  
23 which capacity they're being approached in? I mean, the order  
24 says you can't ask them to do OOM transactions, and you're  
25 saying, well, yes that's true in their capacity as a scheduling  
26 coordinator; however, if it's in their capacity as a credit-  
27 worthy backer, then we can ask them.

28 Who makes the determination as to which capacity  
0100 they're being approached in? And how is it made clear to CERS  
01 when the approach is made which capacity they're being  
02 approached in?

03 MR. ROBINSON: I think operators are making  
04 decisions, but they're not making legal determinations. What  
05 they are doing is, one the hand, if they run into a factual  
06 circumstance under which a supplier is unwilling to do business  
07 with us, they call up CERS. They believe that that's what  
08 they're permitted to do under the tariff. I believe that  
09 legally that's what they're permitted to do.

10 There are other circumstances when they need to  
11 approach a variety of market participants to address a system  
12 condition, and CERS may be among the people that they approach.  
13 I believe they're entitled to do that as well.

14 MR. SCHREIBER: Why, if I may, why was the  
15 response from both Jim Detmers and Terry Winter unclear about  
16 the distinction that the ISO was making between the two roles  
17 that CERS was playing?

18 MR. DETMERS: I guess, Chris, what I would need  
19 is the specifics of what you're referring to in those -- in  
20 those documents. What was it that was not made clear?

21 CHAIRMAN DUNN: I think it's what he read before.

22 MR. DETMERS: I understand that.

23 MR. DRIVON: Well, if I understand, what you're  
24 saying, Mr. Robinson, is that an operator on the floor finds  
25 that there's a net short position that needs to be addressed,  
26 and makes a judgment that he or she is going to call CERS to  
27 have that net short position covered; right?

0101 MR. DETMERS: Let me address that if I may,  
01 Mr. Drivon.

02 The ISO, through this entire time period that  
03 we're dealing with, has been dealing with chronic problems of  
04 over-scheduling as well as under-scheduling.

05 When we were doing that, and to address one of  
06 the points raised here by CERS, that we were having to get into  
07 the sale of power, and having to deal with the sale of power, or  
08 if we were in excess of supply, and for that case we would have  
09 explored going after all scheduling coordinators to utilize  
10 anyone no different, CERS as a scheduling coordinator and any  
11 other scheduling coordinator, to deal with the problem.

12 We deal with things in a time base. We have to  
13 take immediate action on some cases. Other cases we have more  
14 time to be able to plan for that.

15 But with the conditions that we've been dealing  
16 with, and through that time period, we had over-scheduling -- or  
17 under-scheduling as much as 6,000 megawatts; we had  
18 over-scheduling in the terms of thousands of megawatts, where we  
19 had exhausted all of our normal market mechanisms. Then we go  
20 after all scheduling coordinators.

21 If we run out, or if we do not have scheduling  
22 coordinators willing to work with us, willing to do what it is  
23 that we're needing to do because of either the credit conditions  
24

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25 here of California, or that they're not willing to do business  
26 directly with the ISO, then we did make phone calls to CERS  
27 during that time period, and we did explore that.

28 MR. DRIVON: In order to cover a net short

0102  
01 position.

02 MR. DETMERS: In order to deal with the real time  
03 reality of the conditions of schedules coming through us that  
04 were either over or under scheduled.

05 MR. DRIVON: You didn't have enough electricity  
06 to keep the light bulbs burning, so you called CERS because  
07 there wasn't enough electricity?

08 MR. DETMERS: For some conditions. For other  
09 conditions, we were in an over-supply condition and we had too  
10 much.

11 MR. ROBINSON: And CERS among others, as I  
12 understand it.

13 Your question was, we called CERS. My  
14 understanding is, we called CERS among others.

15 MR. DETMERS: We called CERS among others, and we  
16 also knew that the schedules coming through for the majority  
17 were coming from CERS as well. So, the supply, if we ran over  
18 supply, was coming from CERS and the arrangements that had been  
19 made, or for the under-generation, the converse.

20 MR. DRIVON: If there were over and under  
21 schedules on a consistent basis during that time that were being  
22 used, and this was affecting the reliability of the market, the  
23 reliability of the grid, and so forth and so on, and we've been  
24 talking about in all these hearings, and all of this is  
25 affecting the ability of California consumers to, you know, have  
26 reliable energy at the least cost, why didn't you folks tell the  
27 public the names of the people who were doing all of these over  
28 and under schedules and playing all of these games so that the

0103  
01 people of the State of California could know who was causing  
02 them the problem? Why didn't you do that?

03 MR. DETMERS: We did go back to the CERS and  
04 identify over-scheduling, under-scheduling. We did take this up  
05 with the investor-owned utilities so that the issues could be  
06 resolved. We did identify, and we can pass out to the degree  
07 that these things were happening --

08 MR. DRIVON: I understand about that, but I don't  
09 remember at any time -- as a matter of fact, what I do remember  
10 is trying to get the names of the offending market participants  
11 as Chief Counsel of this Committee, and being told that, you  
12 know, that was all confidential information. We weren't going  
13 to get those names.

14 And then the Los Angeles Times cracked the code  
15 because somebody fortuitously put something in a reading room at  
16 the FERC as to what Dr. Sheffrin meant when she said, "A, B, C,  
17 D and E," or whatever it was. And that's what we were going  
18 through to try to find out who it was that was standing on our  
19 toe.

20 My question is, why didn't you folks at the ISO,  
21 if these under-schedules and over-schedules, and games, and  
22 whatever it was, why didn't you all tell people who it was that  
23 was causing them the problem?

24 MR. DETMERS: Again, that may seem like the ISO  
25 has all of the answers. But again, dealing with operations and  
26 in the real-time operations, we do not have all the specific  
27 information to know how accurately those things are occurring,  
28 other than the aggregate -- to use that term again -- but the

0104  
01 total amount of schedules coming into the ISO.

02 MR. DRIVON: So, you didn't know who the

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03 over-schedulers and under-schedulers were?

04 MR. DETMERS: We brought these issues back to  
05 CERS as well as the investor-owned utilities. Again, we didn't  
06 have, and we still today don't have, the information to identify  
07 who was, other than what we have in the settlements process  
08 after the fact.

09 MR. DRIVON: Well, maybe the specific market  
10 participant identification that Dr. Sheffrin referred to in her  
11 report that we know about the names, maybe that's the only  
12 market participants that you were able to identify, I doubt it.

13 But, you know, you may have gone to the investor-  
14 owned utilities, you may have gone to CERS, but you didn't go to  
15 Aunt Mabel and Uncle George, or anybody else in the public, and  
16 tell them who it was that was causing their electric bill to go  
17 through the roof.

18 It seems to me that it's at least likely that if  
19 there is a blackout in San Diego on January 17th, and you tell  
20 the people in San Diego that a certain generator, maybe it was  
21 C, had 500 megawatts of capacity off-line when there was a  
22 blackout on the 17th, it's unlikely that the public is going  
23 stand for another one on the 18th.

24 In other words, do you think that more  
25 transparency and more information to the public would have had a  
26 beneficial effect on putting the feet to the fire with respect  
27 to these market participants who were doing all of these games  
28 and so forth and so on?

0105 01 MR. DETMERS: I would have to agree that more  
02 transparency is a good thing.

03 MR. DRIVON: When are we going to get it?

04 MR. DETMERS: We're giving conditions that we  
05 have to date to deal with.

06 I wanted to address one thing that you mentioned,  
07 Mr. Drivon, and that is, the ISO is not the party responsible  
08 for coming up with the portfolios in order to serve the majority  
09 of the load within California. It only manages the imbalance  
10 energy market.

11 The questions do have to come with those parties  
12 that are -- that are serving California, one of those being  
13 CERS, one of those being the IOUs, to determine how effective  
14 what steps they put into place to manage the risks of the  
15 market, what steps they put into place to economically buy that  
16 power. Those questions need to come, but we do not have the  
17 answers regarding that purchase for that portfolio at the ISO.  
18 We only receive the schedules of the megawatts that are coming  
19 through the system.

20 MR. DRIVON: And you have a Department of Market  
21 Analysis with a whole bunch of very competent people in it who  
22 analyzed what was going on in the market, and who was doing  
23 what, and what the effects were, and so forth and so on.

24 So whose job is it to tell the public who's  
25 causing them the problem?

26 MR. ROBINSON: If I might respond to some of  
27 these questions.

28 First of all, I know that you don't like

0106 01 objections, but these are compound questions with about 25  
02 different elements --

03 MR. DRIVON: Let me make it real simple and not  
04 compound.

05 Whose job is it to tell the public who was  
06 gouging them?

07 MR. ROBINSON: A variety of people. The  
08 Department of Market Analysis, for example, issued a number of  
09 reports.

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10 As part of the program that was recently approved  
11 by our Board, the Oversight and Investigations Program, for  
12 example.

13 We do intend to publish performance of market  
14 participants as it relates to deviations from schedule,  
15 uninstructed deviations, which will pick up some of this  
16 information that you're talking about.

17 With respect to CERS, I do think you're mixing  
18 apples and oranges. You talk about a Sheffrin report that was  
19 really dealing with market power issues, and then you talk about  
20 CERS, and under-scheduling or over-scheduling, which in our view  
21 was not a market power issue. It's a little different to follow  
22 the line of questioning.

23 But bottom line is that the organization  
24 publishes a substantial amount of information. DMA publishes a  
25 substantial amount of information. The Compliance Unit  
26 publishes a substantial amount of information.

27 We have a number of open meetings. All of market  
28 design rules that we propose are subjected to a lengthy

0107

01 stakeholder process. There is a great deal of transparency to  
02 the events at the ISO.

03 MR. DRIVON: So then I can just go back to the  
04 office up here and just scratch through where it says  
05 "Confidential" on these documents that we've got involving who  
06 did what when, and just so everybody can know?

07 MR. ROBINSON: You'd have to show me the  
08 document. I'm not going to respond on a blanket --

09 MR. DRIVON: Well, the Department of Market  
10 Analysis' reports that were put out, as I recall, never specify  
11 any names of offending market participants.

12 MR. ROBINSON: From my recollection is that some  
13 of those reports contain specific bid information, as to which  
14 we are under certain tariff restrictions.

15 MR. DRIVON: Involving nothing more current than  
16 six months.

17 MR. ROBINSON: I'm sorry? Could you ask the  
18 question again?

19 MR. DRIVON: Yes. I think that the FERC  
20 confidentiality prohibition with respect to bid information  
21 talks about bid information that is more current than six  
22 months. Isn't that what it talks about?

23 MR. ROBINSON: I'd have to go back and look at  
24 it. I'm not certain that that is correct.

25 MR. DRIVON: But now we have a new day, and the  
26 ISO is going to start releasing the names and what folks did  
27 that was wrong based on what the Board just did?

0108

28 MR. ROBINSON: We do have a new program by which

01 certain information about market participant conduct will be  
02 published.

03 MR. DRIVON: Including the identities of the  
04 offending market participants?

05 MR. ROBINSON: Yes.

06 MR. DETMERS: Charlie, that is contingent on FERC  
07 approval.

08 MR. ROBINSON: That's true.

09 CHAIRMAN DUNN: I'm letting Larry go here because  
10 he's one of the individuals with a short time here.

11 MR. DRIVON: I had a couple of questions of  
12 Zora.

13 If I understand it correctly, when you were at  
14 the ISO you had a number of conversations with management  
15 concerning how market participants could be urged to behave; is  
16 that true?

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17 MS. LAZIC: Yes, I did.  
18 MR. DRIVON: As I understand it, you made  
19 specific proposals as far as back as 1999 to Mr. Winter, your  
20 suggested approach being that the gaming activities should be  
21 defined, that there should be a prohibition of those gaming  
22 activities expressed by the ISO, that the names of the gamers be  
23 published, and that there should be a consideration of a  
24 petition to FERC to rescind market-based rate authority of  
25 those, the gamers.  
26 Is that true? Did you make those suggestions?  
27 MS. LAZIC: Yes, I did.  
28 MR. DRIVON: And what action, to your knowledge,  
0109 was taken on those suggestions?  
01 MS. LAZIC: At the time I made those suggestions,  
02 I was told that that wasn't the way things worked in California,  
03 that it would anger the generators. That -- I took it to be  
04 dismissed.  
05 I do note that in terms of a longer view, Charlie  
06 has mentioned the Oversight and Investigations Program, which  
07 does do, I hope will do if it's approved by FERC, will do some  
08 of those things in terms of publishing names. It doesn't deal  
09 with the market-based rate authority.  
10 But that was a suggestion that was made to deal  
11 with people who were gaming, abusing rules, and harming the  
12 market and California public, that perhaps simply the mention of  
13 market-based rate authority might have some impact in correcting  
14 some behavior. And if it didn't, that perhaps we should go  
15 after those who were -- who appear to have market power, were  
16 misusing it, and really ought not have market-based rate  
17 authority.  
18 MR. DRIVON: Were you told something to the  
19 effect by Mr. Winter that he considered the generators to be his  
20 constituency?  
21 MS. LAZIC: I don't recall that, no.  
22 MR. DRIVON: That's all I have.  
23 CHAIRMAN DUNN: Charlie.  
24 MR. ROBINSON: Might I add one point about the  
25 market-based rate authority.  
26 I believe during the summer of 1998, the ISO was  
27 pretty much at the forefront challenging the market-based rate  
0110 authority for the suppliers in California. I believe that that  
01 authority exists on three-year cycle.  
02 When suppliers came up essentially for  
03 recertification, I believe in the spring-summer of 2001, again  
04 the ISO went in and challenged the market-based rate authority  
05 on most if not all the suppliers, the major suppliers in  
06 California.  
07 CHAIRMAN DUNN: Okay.  
08 Chris, were there additional comments you wanted  
09 to make?  
10 MR. SCHREIBER: I would only say one thing, and  
11 that is, to the extent that the ISO viewed CERS as having two  
12 different responsibilities, the tapes that we have of the  
13 conversations in 2002 in which CERS was involved in OOM  
14 transactions on behalf of the ISO, the ISO did not indicate  
15 during any of those phone conversations that they were engaging  
16 CERS as one portion of CERS relative to the other. So, there's  
17 no distinction made in real time at the time.  
18 And to the extent that the ISO has the ability to  
19 tell us, tell me, what other market participants were also  
20 engaged at the time of those telephone calls, I'd be happy to  
21 see that, because I have not heard that thus far.  
22 MR. DETMERS: Would that be coming in the form of  
23



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24 a request with the specific dates? We did respond to one  
25 particular set of calls that did elaborate on the numerous  
26 scheduling coordinators in addition to CERS that were called for  
27 a previous event, I believe.

28 MR. SCHREIBER: I don't recall that response.

0111

01 MR. ROBINSON: I can talk to you off-line, or we  
02 can -- I'm sorry, I didn't hear what information you're  
03 requesting.

04 MR. DETMERS: Yeah, if you make the request, we  
05 can look at that, and we can let you know who the individuals  
06 were, or who the entities were scheduling coordinators in  
07 addition to CERS that we were calling during those particular  
08 calls, whatever the time period is.

09 CHAIRMAN DUNN: Other comments in this area?  
10 Margaret, I told you before, if you wanted to  
11 respond to Zora's comments regarding the phone call. If you do  
12 not, that's prerogative.

13 MS. ROSTKER: Thank you, Senator.

14 At the risk of going over ground that may have  
15 been covered by your Committee in prior hearings or through  
16 material that the ISO and or CERS has submitted to you, I will  
17 raise at the most essential basic level, it made no sense to be  
18 discussing balance schedules or fictitious load because we were  
19 not engaged in a discussion about scheduling coordinators  
20 complying with the ISO tariff.

21 We were engaged in the ISO exercising its  
22 authority to take reasonable and prudent action to ensure  
23 reliability.

24 Therefore, because we, on the basis of our daily  
25 forecast, accurately, as is shown within a small percentage,  
26 were predicting that load would show up, and the specific  
27 contingencies that were in place with the transmission outages,  
28 all of which I know you're aware of for that day, we had

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01 contacted the specific generating units we needed to be on line,  
02 and they had refused because they had not been paid for over a  
03 year.

04 Accordingly, it was reasonable and prudent for  
05 the ISO to go to the credit-worthy backer and ask them to do  
06 what they could do to get those generating units on that we  
07 needed for reliability.

08 It had nothing to do with schedules. Therefore,  
09 it is not reasonable, was not there, that the ISO would be  
10 concerned about scheduling for that. We knew that we needed  
11 them to run for reliability purposes.

12 And therein, I think, putting aside whether or  
13 not anyone will ever believe one side on the other on this, the  
14 fact is, the ISO has the authority, has the requirement, and the  
15 mandate, and the responsibility to ensure reliability. The  
16 transmission outages were such, specific units need to run.  
17 They refused to run. We approached the credit-worthy backer and  
18 asked them to do what was necessary.

19 That is something that we do every day under our  
20 authority. We approach directly for OOM or we ask scheduling  
21 coordinators to engage in everyday inter-SC trades to bring  
22 power in, bring power out, specific power at specific locations,  
23 or just generally.

24 And it was the transaction that, in hindsight, I,  
25 at least, am surprised at the furor about it because it was  
26 ordinary course of business, treating people the same and  
27 conducting our business of getting the power out where we needed  
28 it for the grid.

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01 CHAIRMAN DUNN: If I can, Margaret, depending

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02 upon one's view, I'm the disinterested observer, I'm the  
03 interloper. I've been called all kinds of wonderful things  
04 throughout this process.  
05 When this issue first surfaced for us, and we  
06 started to look into it, the impression that existed, and to  
07 some respects still does -- I mean, I'm not picking sides.  
08 We've had testimony about, quote-unquote, this "fictitious load"  
09 that can't be reconciled, at least I don't think so.  
10 But from the outside observer trying to  
11 understand what went on, it still looks questionable. Let me  
12 just tell you why. To the insider, it may not, but to us on the  
13 outside, it does.  
14 You have a situation in which it's on an  
15 unrecorded line. Folks specifically make a request to move it  
16 on to a recorded line after requests for putting in writing, et  
17 cetera, are declined.  
18 I believe, and my recollection maybe wrong. I  
19 haven't read the transcript of the recorded call recently, but I  
20 think CERS did use the phrase "fictitious load," saying that ISO  
21 had used it in the unrecorded call.  
22 I don't recall anybody on the ISO end of the  
23 recorded line arguing that we never used any such phrase. They  
24 didn't acknowledge it, either. It was kind of left dangling out  
25 there.  
26 All those circumstances wrapped together make it  
27 look like something other than business as usual, Margaret, that  
28 you had described.

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01 I'm not seeking any comment. I'm not so sure, as  
02 you correctly point out, that we can resolve it. Maybe we're  
03 all looking at the same object and just describing it  
04 differently from different perspectives.  
05 Charlie, you wished to add something?  
06 MR. ROBINSON: Yeah, I did.  
07 I think that you appear to be operating under an  
08 assumption that there is a requirement in the tariff that bars  
09 the ISO with respect to quote-unquote "fictitious load." And I  
10 don't think that assumption is necessarily well placed, and this  
11 is the reason why.  
12 The whole issue of fictitious load really gets to  
13 the requirement in the tariff that scheduling coordinators or  
14 market participants submit balanced schedules.  
15 There is no requirement in the tariff that says  
16 anything about what the ISO must do when it is planning for  
17 real-time operation. And it kind of makes sense, because by the  
18 time -- most of the time when the ISO is trying to deal with  
19 system conditions, it's doing it well after schedules have been  
20 submitted. So, it makes sense that there's no provision in the  
21 tariff that obligates the ISO in any respect with schedules.  
22 Now, there are tariff provisions that allow us to  
23 deal with anticipated real-time concerns in advance. Again,  
24 there is nothing in the tariff that says how the ISO is to put  
25 its activities in anticipation of real-time events into the  
26 planning documents which are the schedules.  
27 So, I think that when you go on an inquiry about  
28 whether somebody said "fictitious load" or not, I just want to

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01 be certain that you understand, from my point of view, I don't  
02 see anything in the tariff that provides that the ISO is barred  
03 in any respect with respect to schedules. That's number one.  
04 Or that it can't essentially ask its agent or its  
05 credit-worthy backer to do something which the ISO itself is  
06 authorized to do, or at least not prohibited from doing.  
07 CHAIRMAN DUNN: I hear you, Charlie, and fair  
08 perspective, I want to make one comment, then we'll invite CERS

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09 if they wish to make any comment on this one, and then we're  
10 going to move on.  
11 That is, you may absolutely be correct, Charlie.  
12 You lived with this legal world day in and day out. I'm sure  
13 some days you're not happy about that, but I realize you are one  
14 of the most experienced in interpreting what ISO can and can't  
15 do under the various rules, regulations, protocols.  
16 Why this particular one is questionable is that  
17 even if your description is dead-on accurate, the circumstances  
18 surrounding this phone call and how it unfolded were, to the  
19 outsider, odd, to say the very least. So, that raises the  
20 suspicion that maybe something not so dead-on accurate under the  
21 law had occurred.  
22 CERS, any comments you wish to make? No, none.  
23 Chris, any last ones on this issue?  
24 What I'd like to do -- I'm sorry, Zora.  
25 MS. LAZIC: This is kind on topic but a bit  
26 separate.  
27 I just wanted to maybe clear the record on  
28 something that Margaret, Ms. Rostker, had said, and that was  
0116 with respect to CERS still today. I think you may have said  
01 that we're still today the credit worthy backer.  
02 Just so that everybody's clear, we're not. Our  
03 authority --  
04 CHAIRMAN DUNN: I think what Margaret said is, it  
05 ended December 31st, but FERC actually hasn't acted to eliminate  
06 that responsibility.  
07 I think that was what you had stated, Margaret;  
08 wasn't it?  
09 MS. ROSTKER: We continue to have a tariff  
10 requirement that we have only credit-worthy or securitized  
11 market participants to the extent that the IOUs have posted  
12 collateral with us and go back into the market beginning on  
13 January 1st.  
14 CERS, of course, remains on the hook as the  
15 backer for transactions during its time of watch as they settle  
16 out through our system.  
17 CHAIRMAN DUNN: I think we're all in agreement.  
18 MS. LAZIC: We agree. I just didn't want anybody  
19 listening to this to have a different idea that we were still  
20 the credit-worthy backer for any transaction that's starting in  
21 this year, and we're not.  
22 CHAIRMAN DUNN: Understood.  
23 Jim, some follow-up questions. Prior to you  
24 coming up here, your name was used, not in vain, but your name  
25 was used. I want to follow up on some questions specifically.  
26 Your name was mentioned as, if any discussions  
27 occurred at ISO regarding whether or not to aggregate versus  
0117 disaggregate, my terms. I know Jim wrestles with those. That  
01 the ones that would have been involved in such a discussion  
02 would have been Jim McIntosh, Tracy, and Jim Detmers.  
03 Do you recall any conversations occurring in and  
04 around December, 2000 at ISO in which the issue of whether to  
05 aggregate or disaggregate the posted information relating to CBM  
06 was had?  
07 MR. McINTOSH: No, sir. I did not participate in  
08 any conversations relative to that, and I'm not aware of any  
09 conversations like that that occurred.  
10 CHAIRMAN DUNN: One other question.  
11 Your name was also referenced with the  
12 possibility -- I think Tracy had mentioned some recollection of  
13 discussions that involved -- who was it from CERS that you  
14 referenced with respect to CERS attempting to gain access to the  
15

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16 reserve margin? You mentioned --  
17 MR. BIBB: I had mentioned Pete Garriss and Chris  
18 Smith as people that I think I had conversations with. My  
19 conversation Mike McCoy in my group.  
20 CHAIRMAN DUNN: Jim, do you recall any such  
21 discussions that Tracy had described earlier and just referenced  
22 again?  
23 MR. McINTOSH: No, I don't.  
24 CHAIRMAN DUNN: I think that's it for this  
25 panel. That you, guys.  
26 By the way, let me extend to each of you another  
27 thank you for redoing your schedules since we were cut short  
28 last time around. I know it's a huge hassle to do so, but we  
0118 greatly appreciate it.  
02 Let me just ask one other question if I may. And  
03 Charlie, you may want to step into this one.  
04 After the fictitious load issue surfaced, ISO  
05 commissioned an independent investigation that you had  
06 referenced earlier; correct?  
07 MR. ROBINSON: That's correct.  
08 CHAIRMAN DUNN: It's my understanding it's  
09 nearing completion, but not completed yet.  
10 MR. ROBINSON: That's my understanding as well,  
11 but it is being supervised by one of our Board members.  
12 CHAIRMAN DUNN: I understand that.  
13 And the one question that I have is, obviously  
14 the investigation involves, of course, CERS' side as well, too.  
15 Have you guys been approached, cooperating with the  
16 investigator? I know it's an ISO retained one, but is CERS  
17 cooperating with that investigation?  
18 MS. LAZIC: We have been approached and there  
19 were discussions, but we haven't gone beyond that, I don't  
20 believe.  
21 CHAIRMAN DUNN: Why? From my perspective, I'm  
22 going that we have an independent investigator, hired by ISO,  
23 one-half of this debate.  
24 I'm just curious, if the decision by CERS is not  
25 to respond -- I know you didn't say that, Zora, what's going on?  
26 MS. LAZIC: I wasn't involved in the decision, so  
27 I'm having troubles answering it.  
28 I know we were approached, and I know that we  
0119 haven't gone beyond that.  
02 CHAIRMAN DUNN: When you say, "we haven't gone  
03 beyond that," it's your understanding that CERS doesn't wish to  
04 participate, or assist, or respond to the investigation?  
05 MS. LAZIC: No, that's not my understanding.  
06 There were probably terms and conditions that people -- I'm  
07 making this up, so I actually don't know.  
08 CHAIRMAN DUNN: I don't want you to make it up.  
09 MS. LAZIC: I wasn't approached personally, so I  
10 didn't have the discussions personally.  
11 CHAIRMAN DUNN: Who at CERS, if you know, was  
12 approached with respect to that investigation?  
13 I'm just trying to find out who do I talk to?  
14 MS. LAZIC: I think it was our legal counsel.  
15 CHAIRMAN DUNN: That being whom?  
16 MS. LAZIC: It was probably, I think, Peggy  
17 Bernardi.  
18 CHAIRMAN DUNN: Inside counsel or outside  
19 counsel?  
20 MS. LAZIC: Inside for CDWR.  
21 CHAIRMAN DUNN: And what's the name again?  
22 MS. LAZIC: Peggy Bernardi.

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23 CHAIRMAN DUNN: And you think that's the  
24 individual that may have handled the inquiries?  
25 MS. LAZIC: I think so.  
26 CHAIRMAN DUNN: If you could, check it for me.  
27 We will follow up with that.  
28 If, after you leave here today, you discover it's  
0120 a different person, either let us know or let that person know  
01 to please call me, it would be greatly appreciated.  
02 MS. LAZIC: I will.  
03 CHAIRMAN DUNN: Thank you very much.  
04 Charlie.  
05 MR. ROBINSON: I did have one housekeeping  
06 matter.  
07 I don't know how you preserve a record in this  
08 type of proceeding, but if there is some sort of transcript or  
09 preservation of record, I have passed on to you some excerpts of  
10 the November orders. If that could made a part of the record.  
11 CHAIRMAN DUNN: We will do that. Let me describe  
12 what it is that Charlie handed to us, and Evelyn, we'll give you  
13 a copy of it as well so it gets attached to the transcript.  
14 It's entitled, "Excerpts of Key Provisions from  
15 FERC, November 2001 Orders," and in the lower right-hand corner  
16 it says, "Select Committee Hearing, February 5, 2003 California  
17 ISO." Including the cover, it's six pages long.  
18 Charlie, any other ones you wanted to put on the  
19 record?  
20 MR. ROBINSON: That's the only one I can think of  
21 at the moment.  
22 CHAIRMAN DUNN: It will be considered as part of  
23 the record.  
24 Anything else from any of the panelists here?  
25 MR. ROBINSON: I think you said earlier my  
26 correction letter was going to be made a part of the record?  
27 CHAIRMAN DUNN: Yes, correct.  
0121 Jim, I know you've handed them out. Describe  
01 them.  
02 MR. DETMERS: These are the -- this is a chart  
03 of the difference between over and under scheduling.  
04 CHAIRMAN DUNN: Let me describe it.  
05 It's one page. On the bottom right-hand corner  
06 it's dated 03/01/21. Oh, it's entitled "Exhibit A-1." That's  
07 not exhibit to this transcript. I presume it comes from another  
08 document.  
09 MR. DETMERS: It comes from another document,  
10 yes.  
11 CHAIRMAN DUNN: It's entitled, "Difference  
12 between Scheduled Load Versus ISO Forecast," one page. We'll  
13 also have that attached, too.  
14 Anything further? No.  
15 Thank you, everybody, again for adjusting your  
16 schedules and coming back today. I know it's not the top of  
17 your list of favorite things to do, but greatly appreciated.  
18 We will take a couple of minutes. The last two  
19 issues literally are going to take a few moments to wrap up.  
20 We'll take five.  
21 [Thereupon a brief recess  
22 was taken.]  
23 CHAIRMAN DUNN: We literally are only going to  
24 be here a few more minutes.  
25 Here are the other two issues, the first one  
26 with respect to Perot. It's on the agenda itself. All we do is  
27 update everyone for those who are not familiar with it.  
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01 I'm assuming, Chris, that the paragraph that's  
02 here is not on the agenda there? It is not?

03 For those that have followed the Perot issue,  
04 there were documents in a production in November that revealed,  
05 and this was accompanied by a letter from Perot to the Committee  
06 about this issue, that a Perot employee had actually disclosed  
07 confidential ISO information to a third party consultant and an  
08 employee of TaiPower, a Taiwanese power company.

09 The reason this became such an issue when these  
10 documents were disclosed, as most will recall, is that the  
11 various witnesses from Perot Systems maintained rather  
12 steadfastly that Perot Systems did not disclose any confidential  
13 data in the course of their dealings with some of the market  
14 participants at the time of and after their development of some  
15 of the computer programs that were used for the operation of the  
16 California market.

17 We understand that there was a lot of other  
18 investigative bodies that are now looking into that issue more  
19 deeply. We are also looking into it, and we haven't made a  
20 decision as of yet, but you're likely to see at least some more  
21 exploration of the Perot Systems issues in the coming weeks.

22 Moving to the last issue, MD02, I want to make  
23 just a couple quick comments. I won't spend a lot of time on  
24 it. I know Jerry's got a few comments that he wishes to offer  
25 on behalf of CMUA as well, but I don't want to go into too much  
26 depth for my own comments, because this is an issue that will, I  
27 suspect, be fully explored in Senator Bowen's policy committee,  
28 Energy Committee.

0123

01 I know that a lot of folks, ISO and others, are  
02 working on the MD02, and that it is moving down the road. My  
03 own personal view is, I have grave reservations about that. In  
04 fact, I think most everybody saw Dr. Wolack's comments the other  
05 day in which in essence he says that for it to work, there's  
06 some fundamental things that have to be done first. Among other  
07 things, some of those fundamental things carry a price tag of  
08 multi-billions of dollars, such as transmission upgrades itself.  
09 I don't think anyone has ever estimated that the necessary  
10 transmission upgrades would carry something less than a  
11 multi-billion dollar price tag.

12 Obviously, given our budget problem here in  
13 California, that's not likely to happen any time soon. And  
14 given that, just to cite that only as one issue, the very  
15 foundational blocks that are necessary to make MD02 work --  
16 assuming that it could, and I would, of course, debate that as  
17 well -- but the foundational blocks aren't there. And it's one  
18 that I hope all of those working on MD02, including Cal ISO,  
19 will reconsider seriously moving down this road at this time.

20 I just don't believe the fundamental pieces are  
21 in place to move forward which, as I understand it at least, is  
22 the intent in the very, very near future.

23 Jerry, let me turn it over to you as a  
24 representative of CMUA. I know you have some comments as  
25 well.

26 MR. JORDAN: Thank you, Mr. Chairman.

27 Jerry Jordan with the California Municipal  
28 Utilities Association. I will be as brief as possible.

0124

01 Also with me is Tony Braun, in case you ask any  
02 of those highly technical questions that you're inclined to ask  
03 on occasion.

04 We are very concerned with the speed of the MD02  
05 implementation because of -- you know, this Committee in its  
06 entirety has spent a lot of time dealing with what were  
07 basically unintended consequences of the last market design.

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08 I was personally involved in all the negotiations  
09 on AB 1890 and most of the negotiations in the WEPEX process  
10 that led up to the first market design. I fully believe that  
11 there was not a person involved in that process who intended to  
12 end up with a market that was dysfunctional, or who intended to  
13 end up crafting rules that would allow people to manipulate the  
14 market.

15 Nonetheless, a lot of that seems to have  
16 happened. And we -- one of the problems with that design, I  
17 think, was that we were in a very big hurry to do everything at  
18 once.

19 What we hear a lot of these days, especially  
20 coming out of FERC, is that the Pennsylvania-Jersey-Maryland  
21 ISO, PJM, has done all of these things.

22 But if you talk to the people from that ISO, they  
23 will tell you that they did all those things in a very  
24 systematic manner. They evolved over a long period of time.  
25 They did not follow what they call "The Big Bang Theory of  
26 Market Design."

27 And nonetheless, the MD02 process, which as of  
28 now is actually on a faster timeframe than FERC's standard

0125  
01 market design, of which it is basically consistent -- and  
02 attached to my written testimony you'll see the ISO chart, which  
03 shows all the ways that it is consistent with standard market  
04 design -- those are proceeding even ahead of everybody else.

05 And I think the two issues that are of interest,  
06 probably, to this Committee is, part of the reason that we had a  
07 lot of things going on in California, in our view, is that we  
08 had a market system in California that was totally different  
09 than the rest of the interconnected west.

10 We are about to do that again with the MD02.  
11 People, especially in the Pacific Northwest, are adamantly  
12 opposing standard market design, and anything else to do with  
13 California, frankly, but they are not going to adopt it at least  
14 on the same schedule that we are.

15 So, we will end up once again with market rules  
16 in California that are totally different than those that are  
17 being used by everybody else in the west. I would suggest to  
18 you that that would create a lot of opportunities for gaming.

19 In addition, there are a number of specific issues  
20 that we have problems with in the standard market design and  
21 MD02, one of which is locational marginal pricing. And we heard  
22 from one of our members yesterday who's been doing some LMP  
23 studies that in fact where you would expect to have congestion  
24 in some of those studies, they were -- are seeing congestion in  
25 places where you would not intuitively expect them to be. And  
26 since the CRRs are not necessarily being designed to take care  
27 of those congestion points, it looks to me, at least, like there  
28 may be a lot of other opportunities for gaming between notes.

0126  
01 And we are not aware that the ISO has either done  
02 or at least has released any empirical studies, any locational  
03 marginal pricing study, that we can debate, and that you, as  
04 policy makers, could debate to determine whether in fact this is  
05 the direction that you want California to go, especially  
06 considering I think they're spending somewhere around \$50  
07 million to redesign this market system, in addition to the  
08 things that you just mentioned.

09 And we certainly would agree that things like  
10 transmission infrastructure, and generation infrastructure need  
11 to be put in place before we can ever hope to have a competitive  
12 market.

13 CHAIRMAN DUNN: Tony, anything you'd like to  
14 add?

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15 MR. BRAUN: Just briefly, Mr. Chairman.  
16 We have been harping on the ISO to do the  
17 empirical analysis of the LMP model FOR some time.  
18 In fairness, they did put out an initial study.  
19 I think they would be the first to say that it was preliminary,  
20 that it was crude in certain respects because it predated their  
21 development of a lot of the full network model and other things  
22 that they need to do a more accurate study.  
23 But our basic problem was not all the details of  
24 that study, although we certainly had some quarrels, but the  
25 facts that we're going through the accepting as a fait accompli  
26 the market model before we do the empirical analysis. It seems  
27 to be repeating the cart-before-the-horse theme that we did  
28 about five years ago.

0127

01 CHAIRMAN DUNN: Tony, from your perspective, I  
02 just want to make sure our dealings with it, we're kind of  
03 getting consistent contacts at ISO.  
04 Who is the primary contact for your interests at  
05 ISO on MD02?  
06 MR. BRAUN: I probably could give you a long list  
07 of names, but with respect to the study, the people that have  
08 been really hands-on with the study are Jim Price with the ISO.  
09 There's been a lot of other people we've been working with. We  
10 actually chaired an LMP working group, that was a group of a  
11 bunch of stakeholders, to try to work through some of these  
12 issues. And there was a host of folks at the ISO that helped to  
13 try to facilitate that process.  
14 But I think ultimately that process was -- a halt  
15 was called to it, probably to meet regulatory deadlines, but I'm  
16 putting words in the ISO's mouth, and they've proceeded.  
17 And they've proceeded to an extent where they  
18 told FERC yesterday there's only a handful of unresolved issues  
19 left before their next stage of implementation. That concerns  
20 us greatly.

21 CHAIRMAN DUNN: Jerry, you and I have had lots of  
22 disagreements over the past two years. This is one issue we  
23 agree on.

24 MR. JORDAN: I don't remember any.  
25 CHAIRMAN DUNN: I think Spence Gerber is here  
26 from ISO. Spence, are you still here?  
27 Spence, come up, and can you offer the ISO  
28 perspective on this issue?

0128

01 MR. GERBER: Certainly.  
02 Good afternoon, Mr. Chairman.  
03 CHAIRMAN DUNN: For the purposes of the record,  
04 please state your name and title at ISO.  
05 MR. GERBER: My name is Spence Gerber. I am the  
06 Director of the MD02 Implementation Program Management Office.  
07 As I listened, and we've gone down this road of  
08 trying to correct some of the problems that we've seen in the  
09 market since the meltdown in the winter of 2000-2001, we're very  
10 cognizant of what happened there, and how to address that on a  
11 go-forward basis, and are incorporating many of the required  
12 elements in the design to assure, to the best extent possible,  
13 that we recognize when things aren't working the way that they  
14 should, that we have, perhaps, a different underpinning and  
15 infrastructure, as was mentioned earlier, that we're flexible  
16 enough to be able to adapt to those, recognizing that there is  
17 not a perfectly competitive market here in California.  
18 I think for the record what we told FERC that  
19 we're proceeding with, that we're trying to get out the door  
20 here, is a better understanding, through the issuance of a  
21 Request for Proposals, about how vendors might help us in the



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22 implementation in terms of providing the software necessary to  
23 have an integrated forward market, which would allow us to not  
24 have to continue this debate about balanced schedules because  
25 there's an opportunity then for market participants to balance  
26 against each other in those forward markets.

27 And then the issue of LMP, while it is a -- the  
28 procurement strategy would be to ask now in the Request for

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01 Proposals, about how that would be done. The actual  
02 implementation date for this is out in -- right now it's -- with  
03 our current schedule and our estimates of what amount of time it  
04 might take to get a response from a vendor and engage in their  
05 software development, puts us out a year-and-a-half from now.  
06 Well, not quite a year-and-a-half, but in the spring of 2004.

07 So, there is additional time available to issue  
08 additional studies. There's a second LMP study going out the  
09 door.

10 I would concur that the initial study did not  
11 address every known nuance that we've studied since then and has  
12 come to lights.

13 I think the other piece of it is that we have  
14 proposed that there would be actually an LMP, an ongoing LMP  
15 working group, where we would take maybe a smaller group of  
16 constituents that have vested interests in getting this right,  
17 just as we do, to sit down and talk about the studies and try to  
18 figure out what the right things to study are.

19 The proposal itself in addressing the LMP issue  
20 is that there would be a period between the time in which we  
21 implement this forward energy market in an optimized had really  
22 what you're doing is, you're procuring energy, ancillary  
23 services, and relieving congestion in an optimized fashion that  
24 is a least-cost fashion, rather than a sequential market that we  
25 have now. But from the time that you implement that until you  
26 actually put down the LMP, you're going to have a period of time  
27 to actually look at it, and I believe it's an opportunity to  
28 study a real-world impact of the potential pricing applications

0130

01 of locational marginal pricing.

02 The estimate of \$50 million to do what we are  
03 going to do, I'm not sure where that number came from. It's  
04 probably a number that is consistent with what other venues have  
05 spent to do this. Until we get information from vendors about  
06 how much the software implementation is going to cost, we won't  
07 have precise numbers. I don't know if that's -- so I think it's  
08 premature to think that that might be the price that it's going  
09 to take.

10 I think the other issue about being involved or  
11 totally out of sync with the rest of the west, we face that  
12 now. I think that to the extent that we can clean up some of  
13 the issues that we have in terms of understanding how we  
14 interact with them, make that clear to them, with the knowledge  
15 of some of the difficulties that we had the first time, for  
16 example, trying to figure out how to include external  
17 participants in terms of residual unit commitment, which is a  
18 reliability tool for the system operators to assure, absent a  
19 resource adequacy requirement, that we're able to have these  
20 things in place, understand what they are.

21 So, we -- we go into this with a lot more  
22 knowledge and, I think, people's eyes more widely open than they  
23 were, perhaps, the first time.

24 The other place that we are continuing to engage  
25 with the other parties in the region would be through the seam  
26 searing group for the Western Interconnection, whose mandate is  
27 to figure out, as these market designs emerge, to be able to  
28 assure that we understand how the other market designs work, and

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01 how they'll integrate with each other.

02 So I think there still is an ongoing stakeholder  
03 process inclusive of the CMUA, anybody, the state. There's an  
04 ongoing effort in the CPUC procurement strategy or process, and  
05 then also, we're working as part of the Inter-agency Working  
06 Group of the state to determine what the right way to do the  
07 resource adequacy piece is.

08 So, from my perspective, I think that there are a  
09 lot of other things going on that better inform how we're  
10 putting the redesign of the market together. The focus, again,  
11 being on making sure that we have the right tools is a big part  
12 of this for the system operator to operate the grid reliably.

13 Keeping in mind, also, that the context has  
14 changed. If the resource -- I'm sorry, if the procurement  
15 strategy comes out the way it is, we wouldn't expect that we  
16 would be looking at 30 or 40 percent of the market showing up in  
17 the real-time market and having to procure energy for that. If  
18 everybody gets together and understands what their job is, we're  
19 not here to figure out -- ISO not here to figure out who should,  
20 you know, how the portfolios of the IOUs should be set up ahead  
21 of time. We're not mandating how the -- you know, a  
22 municipality does that.

23 I think it's an effort for everybody to work  
24 together and understand what each person's role is, is where we  
25 need to continue to work to make sure that this is successful.

26 CHAIRMAN DUNN: Tony, any response?

27 MR. BRAUN: Very briefly, Mr. Chairman.

28 First of all, I'm skeptical that we'll reverse

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01 course on system design after we've done 70-80 percent of the  
02 software work. So, I think that if we're holding out hope that  
03 somehow we're going to reconsider these fundamental design  
04 principals, say, fall of 2003, I don't think that we should put  
05 much faith in that.

06 CHAIRMAN DUNN: Just so you know, I think Tony's  
07 comment is dead-on accurate.

08 MR. GERBER: Well, if you've been following --  
09 had an opportunity to follow what we're doing, there are many  
10 places where we are asking the vendor to provide us with a  
11 fundamental difference in what we have now.

12 Right now, the system that we have is monolithic  
13 in nature. It isn't adaptable to nuance changes.

14 One of the benefits that we derive from this is a  
15 system that is a little more modular, and as different  
16 requirements emerge, that you're not faced with having to pull a  
17 whole system apart and replace it, but you can in fact address  
18 certain elements.

19 So, there are some other positive aspects that  
20 come from this. Also that there is some optionality in what we  
21 are doing with the system design, so the issuance of an RFP  
22 doesn't necessarily determine that you've gone down one path and  
23 you can't turn back.

24 MR. BRAUN: The other observations I had just  
25 listening to Spence is that earlier, in a FERC pleading that the  
26 ISO filed, the first status report, I think it is, they  
27 mentioned that if they went through a linear approach to  
28 implementing their system design, figuring out what they thought

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01 the end state was going to be, having a stakeholder process,  
02 looking for regulatory approval, and then implementing it, and  
03 then having testing in that order, what would seem logical, it  
04 would just take too long. I think "extensive delays" was the  
05 word.

06 And to my mind, and I think I'm speaking for the

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07 municipal community at whole here, that's not a compelling  
08 reason not to go through that linear process. This is important  
09 enough to get it right, to take the time necessary to get it  
10 right.

11 There are, I think it's undeniable, shortcuts  
12 made when you do things in parallel. I think it raises the risk  
13 of failure of market design in doing it in that fashion.

14 Even Pat Wood seems to be on the bandwagon of  
15 taking the time to get it right, with his SMD model, but that  
16 doesn't seem -- that linear approach doesn't seem to be what the  
17 ISO would prefer here.

18 And lastly with respect to the Seams working  
19 group, I was at a meeting that occurred -- I think it was about  
20 two weeks ago. It was the first public meeting of the Seams  
21 Steering Committee that is supposed to harmonize the three RTOs.  
22 In fairness, the ISO is up and running. The other ones are in  
23 some stages of formation.

24 And the work that, for example, their Committee  
25 on Congestion Management is proposing to do to identify issues  
26 that are right to the real world, examples of some of the  
27 manipulation that happened over the last couple of years, isn't  
28 supposed to be completed until well into 2003. My recollection

0134 is October-November timeframe, but that could be incorrect.

02 Again, we will be very far down the road of  
03 implementation of MD02 at that time, and I'm skeptical that  
04 we'll be able to revisit the fundamental issues at that time.

05 CHAIRMAN DUNN: Spence, from your perspective,  
06 what's the harm, if any, in slowing the process down until more  
07 information, such as Tony is referring to, but I know there are  
08 other issues as well? What's the down side, if any, of doing  
09 that?

10 MR. GERBER: One of the key reasons for doing  
11 what we're doing in the timeframe that we're doing it, again, is  
12 to correct some of the holes that we have in our current market  
13 design that make it very difficult, and put the ISO in a  
14 position of -- and it falls out of the previous conversation at  
15 the hearing today, that we need to be able to have the tools in  
16 the pocket of the system operator to better predict how the  
17 grid's going to behave in real time. That's one of the core  
18 components of an integrated forward market in an assessment,  
19 using a full network model, so that we can better predict what  
20 is going to happen to the system, and dispatch accordingly.

21 So, while there are some long-term needs and some  
22 long-term questions about how the pieces are going to fit  
23 together, what drives the schedule and informs it is correcting  
24 what we have before us now that we need to get shored up, so  
25 that as we do move into a west-wide competitive market, that  
26 we're situated so that we're not hanging out there by ourselves  
27 again. That's my belief.

28 CHAIRMAN DUNN: My only response to that, Spence,  
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01 is I hear comments, again, I'll kind of wrap this up because  
02 this really belongs in the policy committee, but the desire to  
03 fix the current, one of the problems was, throughout the crisis,  
04 little fixes along the way may have taken care of the day, but  
05 complicated things from a variety of other perspectives.

06 So, as I've watched MD02 unfold, as I've already  
07 commented, there's many facets of it that are disconcerting to  
08 me. One of the large ones is, even if it fixed some of the  
09 current problems, it opens up in its current form a whole host  
10 of other, perhaps even more difficult, problems along the way.

11 In this person's perspective, for whatever it's  
12 worth, is, there is no downside to slowing this process and  
13 slowing it dramatically.

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14 I would have said the same thing, but Tony, I  
15 appreciate you saying it first. Once that snowball starts  
16 rolling down the hill, and this one is already rolling down the  
17 hill, the bigger it gets; it becomes impossible to stop.

18 I'm afraid that by fall, it will be too big to  
19 stop even if the consequences, perceived consequences, could be  
20 untold for the State of California.

21 Let me ask one last question, Spence. From your  
22 perspective, this is something you've been working on, I  
23 understand, for quite some time; true?

24 MR. GERBER: I have been actually in the process  
25 from a different perspective, but in terms of trying to manage  
26 the project for the last six months.

27 CHAIRMAN DUNN: How confident are you personally  
28 in the current version of MD02?

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01 MR. GERBER: From what perspective? From the  
02 ability to bring the tools to the table that the dispatchers  
03 need to have a comprehensive package? I'm very, very confident.

04 I think, as I stated earlier, is that the  
05 modularity that we're going to get from this will allow us to  
06 adapt a little more nimbly to the changes that come about in the  
07 future. We don't have that capability right now with the system  
08 that we have.

09 CHAIRMAN DUNN: Jerry, Tony, any last comments?

10 MR. JORDAN: The only thing that I would say is  
11 that during the AB 1890 process, we were asked to take on faith  
12 that the market would provide all the resources that we would  
13 need.

14 This time, we'd like to be shown.

15 CHAIRMAN DUNN: No more "trust us," huh?

16 Okay, anybody else who wishes to comment on MD02?  
17 We just wanted to touch upon it. I will, of course, relay this  
18 to the proper source, the Chair of the policy committee in  
19 energy. I know she has already been on top of this issue and  
20 intends to continue that as well.

21 But with nothing further, long over due our  
22 projected timeframe again, we are adjourned.

23 [Thereupon this portion of the  
24 Senate Select Committee hearing  
25 was terminated at approximately.  
26 3:40 P. M.]

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01 CERTIFICATE OF SHORTHAND REPORTER

02  
03 I, EVELYN J. MIZAK, a Shorthand Reporter of the State  
04 of California, do hereby certify:

05 That I am a disinterested person herein; that the  
06 foregoing transcript of the hearing of the Senate Select  
07 Committee to Investigate Price Manipulation on the Wholesale  
08 Energy Market was reported verbatim in shorthand by me, Evelyn  
09 J. Mizak, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in any way  
12 interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand this  
14 \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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